

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Appeal from Greenville County Court of Common Pleas
The Honorable Perry Gravely, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2017-0002411

Daniel Lopez,.....Petitioner,

v.

State of South Carolina,.....Respondent.

APPENDIX - VOLUME II

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS

2005-GS-23-01956

2005-GS-23-01957

ORIGINAL

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

DANIEL JESUS LOPEZ,
DEFENDANT.

VOLUME II

October 14, and 15, 2009
Greenville, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., JUDGE; and a jury.

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HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for Greenville County.

1 yesterday that was not made a Court's Exhibit.

2 Could I just make that --

3 THE COURT: Sure.

4 MR. MACKENZIE: Thank you.

5 (WHEREUPON, Court's Exhibit No. 3 was marked for
6 identification and admitted into evidence.)

7 MR. SCALZO: And, Judge, I guess since we have some
8 down time, I was, obviously, going to renew a motion to
9 suppress when the drugs get re-presented. Based on some
10 of the cross-examination, I do have some additional
11 grounds. I could put them on the record now --

12 THE COURT: That would be good.

13 MR. SCALZO: -- before we kind of bring people in and
14 out.

15 Is that all right?

16 THE COURT: Sure. Certainly.

17 MR. SCALZO: My additional grounds, Judge, would be
18 that both Deputy Hines and Deputy McBee testified that
19 when they encountered Mr. Lopez that they never tried to
20 sort out any inconsistencies that they perceived him to
21 have. This whole idea that he was driving from North
22 Carolina to Atlanta, they never got him to explain that.
23 I think that gets pulled into the fact that they're
24 creating -- they're trying to create a reasonable
25 suspicion without ever making the simplest effort to kind

1 of get a reasonable answer from the person.

2 This was not something that, obviously, was an
3 admission of some sort of crime. It was only part of a
4 suspicion. And the fact that they didn't inquire further,
5 I think, goes to the fact that they really didn't have the
6 level of reasonable suspicion that they thought that they
7 had.

8 So I would want to add that as some of the basis.

9 THE COURT: All right. That's fine.

10 Bring the jury in, please.

11 (WHEREUPON, the jury came into open court at
12 approximately 9:08 a.m.)

13 THE COURT: Good morning.

14 All right. Solicitor, you may proceed.

15 MS. MONTS: Your Honor, the State calls Officer Craig
16 Moore.

17 THE CLERK: Good morning, sir.

18 Please place your left hand on the Bible and raise
19 your right hand.

20 WHEREUPON,

21 CRAIG MOORE,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 Please be seated.

25 Please state your full name for the record.

1 THE WITNESS: Craig Moore.

2 DIRECT EXAMINATION

3 BY MS. MONT'S:

4 Q Deputy, please, tell the jury where you're employed,
5 and how long you've worked there.

6 A The Greenville County Sheriff's Office, 22 years.

7 Q Can you explain some of your experience and training
8 in law enforcement?

9 A I've been a deputy for 22 years. I worked in vice
10 and narcotics for -- from 1992 until 2008. I've had
11 extensive training in drugs, search warrants, writing
12 affidavits. I spent some time in violent crimes, training
13 in homicide, armed robbery.

14 Q And what unit were you assigned to on January 21st of
15 2005?

16 A The narcotics unit.

17 Q And were you on duty that afternoon?

18 A Yes, ma'am.

19 Q Do you recall receiving an assignment late that
20 afternoon regarding the entire unit?

21 A I do.

22 Q What was your assignment?

23 A My assignment was to help conduct surveillance in the
24 Augusta Road-Interstate 85 area, particularly the -- where
25 the Waffle House was located on Augusta Road. We had a

1 drug investigation taking place. And we were expecting an
2 arrest to be made.

3 Q And where did you go, and did you park your vehicle?

4 A I was positioned back behind the Waffle House in the
5 Holiday Inn parking lot. There is a common drive off of
6 Augusta Road. And there was an entrance into the Waffle
7 House off that common drive to the Holiday Inn.

8 Q Could you see the Waffle House parking lot from that
9 location?

10 A Initially, where I was parked at, I could not. I was
11 positioned and waiting on the signal over the radio to
12 move in to the Waffle House area.

13 Q And who were you to get the signal from, if you
14 recall?

15 A I believe the signal was coming from either
16 Investigator Marchi or possibly Sergeant Burris at the
17 time.

18 Q And what did you do once you received this message?

19 A I moved up to the Waffle House parking lot.

20 Q What did you observe when you got there?

21 A By the time I got there, there were already units on
22 the scene. There was several of our unmarked vice and
23 narcotics vehicles that had a small Ford Ranger pickup
24 truck blocked in and along with an unmarked police vehicle
25 with flashing lights, and a marked police vehicle with

1 flashing lights on.

2 Q Did you ever exit your vehicle at that location?

3 A I did exit my vehicle. But I did not -- the scene
4 was already secure. So I did not approach where the
5 arrest had taken place.

6 Q Did you have an assignment after that to go to
7 another location?

8 A Yes, ma'am. I was told to go to [REDACTED]
9 Boulevard.

10 Q What did you observe when you got to that location?

11 A We went over there, there was some surveillance being
12 conducted on the residence. There was some radio traffic
13 about someone leaving the residence. And they were later
14 stopped.

15 By the time I got there, the units had stopped the
16 car leaving the residence, and had already arrived back
17 and were exiting and walking back up to the residence.

18 Q Was that the mother?

19 A Yes. It turned out to be the mother of Mr. Nelson
20 that they had stopped leaving the residence.

21 Q And describe what other officers were there when you
22 arrived.

23 A Investigator Rogers was there. Officer McBee,
24 another officer, Kerian [phonetic] -- Investigator
25 Kerian [phonetic] was there on scene.

1 Q Did you go inside the house?

2 A Yes, ma'am, later. We, initially, got out. And we
3 started talking to Ms. Burns. Mr. Burns, the husband,
4 came out of the house. We talked to both of them and
5 explained to them the situation that was going on and the
6 arrest of Mr. Nelson.

7 We explained to them that we would like to obtain
8 consent to a search of their residence. Because we
9 believed there may be other evidence of drug involvement
10 by Mr. Nelson in the residence. And, at that time, they
11 granted consent to search of their home.

12 Q And can you describe the house when you went inside?

13 A It was a single story, I guess, a ranch-style home,
14 probably between 1,200, 1,400 square feet. In the living
15 room area, there was a bed that they advised that
16 Mr. Nelson had been sleeping in --

17 MR. MACKENZIE: I'm going to object to hearsay, Your
18 Honor.

19 THE COURT: Just tell us what you saw. Don't tell us
20 what anybody said.

21 THE WITNESS: There was a bed in the living room, a
22 kitchen area, a bedroom off the kitchen area, another
23 bedroom at the front of the house that was not being used
24 due to some type of damage, maybe possibly some fire
25 damage, or termite damage. And then the Burns' bedroom.

1 BY MS. MONTIS:

2 Q And the bedroom off of the kitchen, was there anybody
3 in that room?

4 A Yes, ma'am. There was a subject in there that we
5 were advised was the brother of Mr. Nelson, who was
6 bedridden, living in that bedroom.

7 Q Were -- was he exited from that room?

8 A Yes, ma'am. He was assisted into a wheelchair. And
9 he was wheeled out to one of the common areas of the
10 house.

11 Q And what was your assignment at that scene?

12 A My assignment was to assist in the search of the
13 residence.

14 Q And what areas did you search?

15 A I searched the living room area. It's kind of a
16 combination living room-dining room area off the kitchen.
17 And then I, also, searched the bedroom in which the
18 brother came out of.

19 Q And describe what you found during the search.

20 A I, first, located a small, clear sandwich-type bag
21 that contained plant material from a china hutch in the
22 living room -- or in the dining room, rather, the
23 dining-living room combo. I later found a semi-automatic
24 pistol, which was loaded with seven bullets from the back
25 bedroom where the brother was living at.

1 And then I later found a box of 9mm ammunition in the
2 china hutch, also, in the dining room.

3 Q And describe in that bedroom off of the kitchen,
4 where was the gun?

5 A The gun was in the closet. (It was located in the
6 closet.

7 Q Do you recall where in the closet?

8 A It was in the upper shelf of the closet.

9 Q If you were standing up, how high would that shelf
10 be?

11 A Probably between six and seven foot.

12 - MS. MONT'S: I'd like to have this marked.

13 (WHEREUPON, State's Exhibit No. 24 was marked for
14 identification only.)

15 BY MS. MONT'S:

16 Q Deputy, I'm going to hand you what's been marked for
17 identification as State's Exhibit No. 24. Can you,
18 please, identify this?

19 A Yes, ma'am. This is the bag of plant material that I
20 found in the china hutch.

21 Q How was -- what was its appearance at the time? How
22 many of these bags were around it, or what was the --
23 describe the condition it was in when you found it.

24 A It was just encased, as I recall, in a -- just a
25 regular sandwich-type bag. It was packaged in it.

1 Q And where did you take it once you found it?

2 A I turned it over to Investigator Rogers, who was
3 logging in everything that was found, documenting
4 everything that was found.

5 MS. MONT'S: I'd like to have this marked.

6 (WHEREUPON, State's Exhibit No. 25 was marked for
7 identification only.)

8 BY MS. MONT'S:

9 Q I'm going to hand you what's been marked for
10 identification as State's Exhibit No. 25. Can you
11 identify this?

12 A Yes, ma'am. This is the box of 9mm ammo that I found
13 in the china cabinet.

14 MS. MONT'S: I'd like to have these marked.

15 (WHEREUPON, State's Exhibit Nos. 26 and 27 were
16 marked for identification only.)

17 BY MS. MONT'S:

18 Q Deputy, I'm going to hand you what's been marked for
19 identification as State's Exhibit Nos. 26 and 27. Can
20 you, please, identify these items?

21 A Yes, ma'am. This is the semi-automatic pistol that
22 was located on the shelf in the closet where in the --
23 where the brother's bedroom was. And this is the magazine
24 and the ammo that was contained in the magazine loaded
25 into the pistol.

1 Q And what did you do with those last two exhibits,
2 State's Exhibit Nos. 26 and 27?

3 A These were, also, turned over to Investigator Rogers
4 for documentation purposes.

5 Q And what was the condition of the handgun when you
6 found it?

7 A It was loaded.

8 Q And have you seen these items since you turned them
9 over to Investigator Rogers that night?

10 A No, ma'am.

11 MS. MONTS: Thank you.

12 No further questions.

13 THE COURT: Any questions, Mr. Mackenzie?

14 MR. MACKENZIE: Just a few, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MACKENZIE:

17 Q You didn't find any money in the house, did you?

18 A No, sir, I did not.

19 Q You stated that there was one bedroom that did not
20 appear to be used; is that correct?

21 A That's correct.

22 Q And then were there two bedrooms in addition to that,
23 or one in addition?

24 A Two more in addition, I believe.

25 Q All right. And one -- the brother was in one?

1 A Uh-huh.

2 Q And then the other appeared to be used by the
3 parents?

4 A The parents.

5 MR. MACKENZIE: Thank you.

6 That's all I have.

7 THE COURT: Any questions, Mr. Scalzo?

8 MR. SCALZO: No questions, Judge.

9 THE COURT: Thank you.

10 Step down.

11 MS. MONTS: Your Honor, we ask that this witness be
12 excused.

13 THE COURT: Any objection?

14 MR. MACKENZIE: No objection.

15 MR. SCALZO: No, sir.

16 MS. MONTS: Your Honor, the State calls Tony Rogers.

17 THE CLERK: Mr. Rogers, please, place your left hand
18 on the Bible and raise your right hand.

19 WHEREUPON,

20 TONY H. ROGERS,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please be seated.

24 Please state your full name for the record.

25 THE WITNESS: Tony H. Rogers.

DIRECT EXAMINATION

BY MS. MONTS:

Q Investigator, please, tell the jury where you're employed, and how long you've worked there.

A I'm employed by the Greenville County Sheriff's Office. I've been working there since 1981.

Q And, please, describe some of your experience and training in law enforcement areas.

A I, initially, started my career in law enforcement with the Town of Williamston in 1975 where I was certified. As I said, I moved to Greenville County in '81. 1987, during that time, I worked the road.

I went to numerous schools pertaining to financial crime enforcement, credit cards. Then I did some classes on blood drops, violent crimes. I went to the fingerprint evaluation class and the basic investigator's class.

And then I moved into investigations in the narcotics unit in 1987. And since that time, I've been to -- on two different occasions assigned to the DEA task force, and gone through DEA's two-week task force agent school and their basic narcotics school.

I've been to the South Carolina Criminal Justice Academy basic narcotics. I've been to interview and interrogation in Lanco [phonetic], Georgia, a two-week course. I've been to basic lab investigations and

1 clandestine lab investigations in Mississippi, just
2 hundreds of hours of training.

3 Q How many years have you been in vice and narcotics?

4 A Since '87, you know, 21.

5 Q And in January of -- on January 21st of 2005, were
6 you given any assignment that afternoon with the unit?

7 A That afternoon, yes, I was. I was called. I was, at
8 that time, assigned over at the DEA office and was
9 assigned to the DEA task force. And I believe Sergeant
10 Burris called me.

11 (Interruption in the courtroom.)

12 THE WITNESS: Excuse me, Your Honor.

13 But Sergeant Burris called me and asked me if I could
14 come over and assist them with this case.

15 BY MS. MONT'S:

16 Q And where were you asked to go?

17 A Well, when I got there, they had everything -- I
18 mean, it was pretty chaotic. Things were moving pretty
19 fast. I'm -- I walked in and was immediately sent to the
20 Waffle House.

21 Q Where was the first place you went to meet up?

22 A To the Waffle House.

23 Q Where did you meet with Officer -- Sergeant Burris?

24 A Sergeant Burris, at southern command.

25 Q Okay.

1 A I walked in. And, like I said, everybody was going.
2 And he said, look, this is what's going on. I was given a
3 quick briefing by him and Investigator Marchi. And they
4 asked if I could go over there to the Waffle House. I
5 did. I went straight down to the Waffle House and pulled
6 in to the lower end of the Waffle House parking lot, just
7 off of Augusta.

8 Q And what did you observe when you got there?

9 A I hadn't been there long when Mr. Nelson came in in a
10 dark-colored Ford Ranger truck. He parked -- backed into
11 the parking place and walked into the Waffle House. He
12 went to the counter. I could see him from where I was
13 at --

14 Q Does the Waffle House have windows?

15 A Yes. It's got windows all the way around the front
16 of it. And I was able to observe him walk up to the
17 counter. And he was just in there momentarily. And he
18 came back out with a to-go bag and a cup in his hand.

19 I was, also, monitoring Investigator Grounsell on the
20 thing. And I -- as he come across the parking lot, I --
21 it looked like he, as Grounsell said, made a couple of
22 head motions towards him. And then Investigator Grounsell
23 confirmed that that's what he was seeing, too, over the
24 Nextel.

25 I couldn't see him when he, actually, got to the

1 car -- or to the truck. And as he started pulling out,
2 Investigator Grounsell advised that, you know, he was
3 going to follow him. He was moving out.

4 And then Investigator Marchi started advising all
5 units to move in for the takedown. I waited until
6 Investigator Marchi and Sergeant Burris --

7 (Interruption in the courtroom.)

8 THE WITNESS: -- pulled in front of him in the truck.
9 And then when they pulled in front of him, I pulled up on
10 the side of him. I was in a pickup truck, too.

11 (Interruption in the courtroom.)

12 BY MS. MONTS:

13 Q Describe how many cars were in the parking lot?

14 (Interruption in the courtroom.)

15 THE BAILIFF: Whose phone is that? Whose phone is
16 ringing?

17 THE WITNESS: That is mine. I forgot to turn it off.

18 Can you take it outside? Will you turn it off?

19 I'm so used to having it on. I forgot to cut it off
20 this morning.

21 THE BAILIFF: I can't cut it off.

22 THE WITNESS: Just put it out in the hall until I get
23 through, please.

24 I'm sorry, Your Honor.

25 And where were we?

1 BY MS. MONTS:

2 Q What did you observe in the parking lot?

3 A As -- Lieutenant Burris pulled in, then McBee pulled
4 in in his unmarked car. And Doug Wannemacher --

5 Q Did his unmarked car have blue lights?

6 A Yes, it did. He had --

7 Q Were they on?

8 A -- his blue lights on. Yes, they were.

9 And Investigator -- Doug Wannemacher pulled in. He
10 had a marked unit. And he pulled in with his car and got
11 out with his dog.

12 Q Did Wannemacher have blue lights on?

13 A Yes, he did.

14 Q And, please, continue. What did you observe?

15 A Investigator Marchi went around and got Mr. Nelson
16 out of the car, and placed him under arrest. Shortly
17 after that, he advised of the address that was on his
18 license. And it came back to the address that -- the same
19 address as the pickup truck.

20 So myself, Investigator Kerian [phonetic], and McBee
21 went to that address and set up surveillance on it.

22 Q Do you recall if you were the first ones to go to the
23 [REDACTED] address?

24 A Yes, we were.

25 Q And who was present when you arrived?

1 A At the address?

2 Q Yes, sir.

3 A We had no idea. We just went over there and set up.
4 I was above the house, if I remember correctly. And
5 Investigator Kerian [phonetic] was below the house on the
6 street watching. And when Ms. Brown [sic] came out and
7 started down the street, one of us advised. And she was
8 stopped then by McBee. He was back. He was a street over
9 out of sight. He wasn't sitting right out on the street
10 with us.

11 Q And did you speak to anybody?

12 A I spoke with her when they -- we went -- she was just
13 down the street a little ways. She was stopped, brought
14 back to the house. McBee asked her to come back. And she
15 came back up there. And we were in the yard talking with
16 her. We just had arrived back at the yard when
17 Investigator Moore showed back -- showed up over there.

18 And then he and I spoke with her. She advised us
19 that her husband was there. We asked who was in the
20 house. She said -- or we were advised that her husband
21 was there. We asked him to come out.

22 And sometime during the conversation, as
23 Mr. Brown [sic], came out, we were advised, also, that
24 there was an invalid son, as well as an infant niece, I
25 believe, in the house. And we talked to both of them.

1 They advised they owned the home together. We asked if
2 they would give us consent. And Mr. Brown [sic] signed
3 the consent. And myself and --

4 Q Do you mean Mr. Burns?

5 A Burns. I'm sorry. Mr. Burns. I'm sorry.

6 After he signed it, it was witnessed by myself and
7 McBee.

8 Q And did you enter the house?

9 A Yes, we did.

10 Q What did you observe when you went inside?

11 A We went inside. There was a kitchen and like a
12 common area like a dining room between the kitchen and the
13 living room. The living room had a bed kind of sitting in
14 the middle of it. There was a bedroom off to the right of
15 the kitchen. I had told them that I would take care of
16 the scribe duties on the consent.

17 And so I cleared off a spot on the table right there
18 in the little common area in front of a china hutch and
19 everything. And I got set up to start taking evidence as
20 it was found around the house.

21 Q And as the -- what is that duty called, and what
22 exactly do you write down?

23 A All right. As someone finds something, they bring it
24 to me, advise where it was found at. I make a notation
25 usually on a pad, but I, also, noted on the consent, or we

1 have an inventory sheet that goes with a search warrant.
2 We -- and I noted on those what -- the evidence sheet that
3 I'm using the inventory for the search warrant are this
4 thing. And I placed the evidence into a storage bag,
5 marked it with an item number, THR. I usually use my
6 initials, and a number then.

7 And when we get through, I take all of it to property
8 and evidence for storage. All the narcotics or drug
9 evidence is then weighed by me. And when you weigh it,
10 you make a note of the weight, the date, the case number.
11 And you put your initials inside the bag that you place it
12 into. And then it's all turned over to a property and
13 evidence technician, if there's one available, or it's
14 placed in the drop box, if there's not one available.

15 Q Did you happen to search the bedroom in the living
16 room?

17 A No, I didn't.

18 Q Do you know which officer did?

19 A I can refer to my notes.

20 Agent Moore, as he testified to a little earlier, was
21 in the bedroom, in the dining room area. I believe from
22 the testimony yesterday, Maxwell searched the living room.

23 Q How do you package up the items that are given to you?

24 A It depends on what it is. Some stuff is placed into
25 these type of envelopes here. Drug evidence, generally,

1 goes into the plastic envelopes that can be sealed.
2 They're heat-sealed at the property and evidence room and
3 placed into P&E.

4 Q And can you list us the letters, and the THR for your
5 initials, and the numbers of the items that you took
6 custody of and took to property and evidence?

7 A Yes, I can. THR-1 was a white bag on clear --

8 THE COURT: Will counsel approach, please?

9 (WHEREUPON, a bench conference was held.)

10 BY MS. MONTIS:

11 Q Officer, once you took all the items that you took
12 custody of on the night of January 21st, 2005, and took
13 them to the drop box at the law enforcement center, have
14 you seen those items since that date?

15 A Not until they started being introduced into evidence
16 here in the courtroom.

17 MS. MONTIS: Thank you.

18 No further questions.

19 THE COURT: Any questions, Mr. Mackenzie?

20 MR. MACKENZIE: Just briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. MACKENZIE:

23 Q Deputy Rogers, there was a question about -- you
24 mentioned that Wannemacher was in what kind of car at the
25 Waffle House?

1 A He was driving a Crown Vic with -- it was a fully
2 marked Crown Vic.

3 Q I mean, is it a regular Greenville County Sheriff's
4 Office --

5 A Yes, sir.

6 Q -- marked car?

7 A Yes, sir, at that time. Now, the dog handlers just
8 about all of them -- we still have some that are in the
9 Crown Vic's. But most of them now are in the Chevy
10 Tahoe's.

11 But, at that time, the dog unit was kind of still in
12 its infancy. And they had not transitioned into those
13 vehicles yet. And just about everybody was still
14 driving regular patrol cars with the back seats
15 modified.

16 Q Okay. Did you find any money in the house?

17 A No, sir, we did not.

18 Q Okay. And did you find any mobile phones in the
19 house?

20 A No, sir.

21 MR. MACKENZIE: Thank you.

22 That's all I have.

23 THE COURT: Any questions, Mr. Scalzo?

24 MR. SCALZO: No, sir.

25 THE COURT: Step down.

1 MS. MONTES: Your Honor, I can wait until after I
2 either put up the property and evidence person to
3 move these items into evidence, or I can do it at this
4 time.

5 THE COURT: Is there any objection?

6 MR. MACKENZIE: The only objection I have is the one
7 previously stated that's already been ruled on. And I
8 don't have anything else to add.

9 THE COURT: All right. Then they're in evidence.

10 MS. MONTES: Your Honor, just to be certain, every
11 piece of evidence that's been marked so far --

12 THE COURT: Yes.

13 (WHEREUPON, State's Exhibit Nos. 3, 5, 6, 8, 9, 10,
14 11, 12, 13, 14, 15, 16, 17, 22, 24, 25, 26, and 27
15 were admitted into evidence.)

16 MS. MONTES: The State would call Dar Shaw.

17 THE CLERK: Please place your left hand on the Bible
18 and raise your right hand.

19 WHEREUPON,

20 DARWIN SHAW,
21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please be seated.

24 Please state your name for the record.

25 THE WITNESS: Darwin Shaw, S-H-A-W.

DIRECT EXAMINATION

BY MS. MONT'S:

Q Mr. Shaw, please, tell the jury where you're employed.

A With the forensic division, Department of Public Safety, Greenville, South Carolina.

Q And is one of your duties in that position to attempt to lift latents off of items that have been turned into property and evidence by officers?

A That's correct.

Q And can you briefly tell us what a latent print is?

A A latent print is a fingerprint that's been deposited on some type of an object where you have to use some type of a process, whether it be fingerprint powder or chemicals, to enhance that fingerprint to make it visible.

Q And did you attempt to process items in this case, 2005-014204?

A I did.

Q And did you lift any prints off of any of the items?

A Yes, I did.

Q And when I say "print," does that mean it is a complete print, or what is it that you lift?

A What I'm looking for is ridge detail that I feel might be sufficient enough to make an identification, whether it be a latent print or a patent print.

Q And do you check the items out from property and

1 evidence and, after your analysis or your attempt, return
2 them back to property and evidence?

3 A That's correct, I do.

4 Q And who, actually, analyzes or compares what you have
5 lifted?

6 A It goes to -- any prints that I lift for comparison,
7 they are sent up to our latent division and there are
8 examiners there who do the examinations.

9 MS. MONTES: Thank you.

10 No further questions.

11 THE COURT: Any questions, Mr. Mackenzie?

12 CROSS-EXAMINATION

13 BY MR. MACKENZIE:

14 Q What items did you send for analysis?

15 A There were pieces of packing tape that had patent
16 prints on them, which were visible to the naked eye. And
17 there was, also, a piece of, I believe, a stretch wrap
18 that had a fingerprint. After I fumed it with super glue
19 and examined it, I found what looked like a latent print
20 and that was, also, sent up.

21 MR. MACKENZIE: Thank you.

22 MR. SCALZO: I don't have any questions, Judge.

23 THE COURT: Step down.

24 MS. MONTES: Your Honor, the State calls Renee
25 Sherbert.

1 Your Honor, may this witness be excused?

2 THE COURT: Any objection?

3 MR. MACKENZIE: No, sir.

4 MR. SCALZO: No, sir.

5 THE COURT: Thank you.

6 THE CLERK: Ma'am, please, place your left hand on
7 the Bible and raise your right hand.

8 WHEREUPON,

9 RENE E FOSTER SHERBERT,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please be seated.

13 Please state your full name for the record.

14 THE WITNESS: Renee Foster Sherbert.

15 DIRECT EXAMINATION

16 BY MS. MONT'S:

17 Q Sergeant Sherbert, please, tell the jury where you're
18 employed.

19 A I'm employed by the Greenville County Department of
20 Public Safety Forensic Division.

21 Q And in that capacity, is one of your duties to
22 compare latent prints that have been lifted by other
23 employees such as Mr. Shaw?

24 A Yes, ma'am. I receive latent prints from our own
25 crime scene unit and other agencies in and around the

1 upstate of South Carolina.

2 Q And, in this case, 1-2005-14204, did you compare any
3 items or analyze any items that were presented to you by
4 Mr. Shaw?

5 A Yes. I received a latent print list from Sergeant
6 Shaw in the latent print section.

7 Q And were you able to make a match on those?

8 A I made no matches to the latents that were submitted
9 to me.

10 Q What was the quality of these latents?

11 A Individually, some of them were comparable, you know.
12 They could be identified if you had the right person,
13 basically. And others were a little more marginal. But
14 for the most part, they were comparable.

15 Q And, again, you found no matches?

16 A That is correct, no matches.

17 MS. MONTS: Thank you.

18 No further questions.

19 THE COURT: Mr. Mackenzie?

20 MR. MACKENZIE: Just briefly.

21 CROSS-EXAMINATION

22 BY MR. MACKENZIE:

23 Q You analyzed certain evidence from this case; is that
24 correct?

25 A What I analyzed were latent lifts submitted to me by

1 Sergeant Shaw from items that he had processed..

2 Q All right. And who did you compare those
3 against? Whose fingerprints did you compare those
4 against?

5 A In this case, I compared an Octavius Nelson, a Daniel
6 Lopez, and a James Goodman.

7 Q You found no matches?

8 A That's correct. There were no matches.

9 MR. MACKENZIE: Thank you.

10 THE COURT: Thank you.

11 Step down.

12 MR. SCALZO: No questions.

13 MS. MONTES: Your Honor, we ask that this witness be
14 excused.

15 THE COURT: Any objection?

16 MR. MACKENZIE: No, sir, Your Honor.

17 MR. SCALZO: No, sir.

18 THE COURT: Thank you.

19 MS. MONTES: Your Honor, I believe we have one witness
20 left. And I'll go see if he's in the hallway.

21 THE COURT: All right.

22 (Pause.)

23 MS. MONTES: Your Honor, I believe he's on his way.

24 THE COURT: Please take the jury out for a short
25 recess.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 9:44 a.m.)

3 THE COURT: Has he left the law enforcement center?

4 MS. MONTS: Yes, Your Honor.

5 THE COURT: Okay. We'll take a break.

6 (WHEREUPON, a break was taken.)

7 (WHEREUPON, State's Exhibit Nos. 28 and 29 were
8 marked for identification only.)

9 THE COURT: Okay. Bring the jury in, if they're
10 ready.

11 (WHEREUPON, the jury came into open court at
12 approximately 10:09 a.m.)

13 THE COURT: Solicitor, you may proceed.

14 MS. MONTS: Your Honor, the State calls James
15 Armstrong.

16 THE CLERK: Sir, please, place your left hand on the
17 Bible and raise your right hand.

18 WHEREUPON,

19 JAMES WILLIAM ARMSTRONG,
20 after first having been duly sworn, testified as follows:

21 THE CLERK: Thank you.

22 Please be seated.

23 Please state your full name for the record.

24 THE WITNESS: James William Armstrong.

25

DIRECT EXAMINATION

BY MS. MONTS:

Q Mr. Armstrong, please, tell the jury where you're employed.

A I'm employed with the Greenville County Department of Public Safety Forensic Division Crime Laboratory.

Q Can you, please, give us the extent of your education?

A Yes, ma'am. I have a Bachelor's Degree in Chemistry from Erskine College. I have trained in the area of drug identification approximately one year under the direction of our lab supervisor. I've attended numerous instrumental analysis schools concerning the instruments I use in my analysis for drug identification. I have been through the Drug Enforcement Administration -- there's a forensic chemist seminar in Washington, DC, sponsored by the DEA. I have testified as an expert in the area of drug identification no fewer than 119 times in federal, state, and local courts.

As another form of my responsibilities, I'm, also, a firearms examiner where I've received numerous training where I've trained as an apprenticeship-type style training under the direction of a retired firearms examiner from the Philadelphia PD. I've attended -- or visited and toured 11 different firearm manufacturing

1 facilities, watched the product being made from raw
2 material to the end product.

3 I've been through three ammunition manufacturing
4 facilities to see the same process from raw material to
5 the end -- finished product. I've attended schools
6 sponsored by the Alcohol -- Bureau of Alcohol, Tobacco,
7 and Firearms to learn how to identify firearms, how to
8 restore serial numbers, and do proper identification for
9 projectiles comparing those to weapons as well. And I've
10 testified in that area of expertise, at least, 18 times in
11 federal and state courts.

12 MS. MONT'S: Your Honor, the State would move to admit
13 Mr. Armstrong as an expert in both the field of chemical
14 drug analysis and in firearms identification and
15 ballistics.

16 THE COURT: Any voir dire?

17 MR. MACKENZIE: No, sir, Your Honor.

18 MR. SCALZO: No, sir.

19 THE COURT: He's qualified.

20 BY MS. MONT'S:

21 Q Mr. Armstrong, I'm going to hand you what's in
22 evidence as State's Exhibit No. 5. Can you, please,
23 identify this for the jury, and explain any markings?

24 A Yes, ma'am, I can. The outer most bag has my
25 initials and the date, which I sealed it with a double

1 heat seal. On the inner bag, it, also, has my initials
2 and date where I had opened a sealed container. And then
3 another where it's opened again for another separation
4 process. And then it, also, has the item number with my
5 initials and the weight on a bag which contains the white
6 powder substance.

7 Q Did you check this out of the property and evidence
8 room at the law enforcement center in order to test it?

9 A Yes, ma'am, I did.

10 Q Did you do a test on this substance?

11 A Yes, ma'am, I did.

12 Q Did you make a report based on your analysis?

13 A Yes, ma'am, I did.

14 Q I'm going to hand you what's been marked for
15 identification as State's Exhibit No. 28. Can you,
16 please, identify this?

17 A Yes, ma'am. This is a copy of my lab report that
18 corresponds with this item.

19 Q Is that your signature on the form?

20 A It's a copy of my signature, yes, ma'am.

21 MS. MONT'S: Your Honor, we move State's Exhibit
22 No. 28 into evidence.

23 THE COURT: Any objection?

24 MR. SCALZO: No objection to State's Exhibit No. 28.

25 MR. MACKENZIE: No objection, Your Honor.

1 THE COURT: I didn't -- what did you say, Mr. Scalzo?

2 MR. SCALZO: I said no objection to State's Exhibit
3 No. 28. I think that's just the report.

4 THE COURT: Okay. Subject to your objection.
5 Go ahead.

6 (WHEREUPON, State's Exhibit No. 28 was admitted into
7 evidence.)

8 MS. MONTES: And, Your Honor, I believe State's
9 Exhibit No. 5 is already in evidence.

10 THE COURT: It is.

11 BY MS. MONTES:

12 Q Can you, please, publish the results from testing,
13 State's Exhibit No. 5.

14 A "Item A, I found it to be a bag containing a powder
15 substance. I found that bag to contain cocaine with a
16 weight of 504.48 grams.

17 Q Mr. Armstrong, I'm going to hand you State's Exhibit
18 No. 3 entered into evidence. Can you, please, identify
19 this item?

20 A Yes, ma'am, I can.

21 Q Did you check this item out from the property and
22 evidence room and perform a test on it?

23 A Yes, ma'am, I did.

24 Q What test did you perform on this item?

25 A This one I tested for function and operability of the

1 firearm, as well as the serial number restoration process.

2 Q Describe what that is.

3 A The serial number on the firearm is located on the
4 frame portion. And when I received the firearm, it,
5 actually, had mechanical abrasions and some impression
6 marks, which were hiding the serial number. So it was an
7 obliterated serial number, so it could not be read. So it
8 identified the ownership of that firearm.

9 Q And what did you do on that item?

10 A When I received it, I checked it for operability to
11 make sure it functioned first. Then I removed the slide
12 from the frame.

13 Next, I did a chemical restoration process where we
14 grind the metal down to get it to a smooth surface. And
15 then we use chemicals or different acids to etch that
16 metal where -- because that metal has been changed when
17 they, actually, stamped the serial number into the metal.
18 When it's stamped, the area underneath the stamp becomes
19 harder.

20 So our chemicals that we use will, actually, eat the
21 harder metal first. And then it will restore the serial
22 number and let us read it. When we put those chemicals
23 on, it etches that little part and it lets us read the
24 number for a few seconds so we can record it and then go
25 from -- go on from there to do an identification of that

1 firearm.

2 Q And is the serial number now, based on your
3 procedures that you performed, more visible than it was
4 when you first obtained it?

5 A It still cannot be read today.

6 Q But it's in a different form than when you first
7 obtained it?

8 A Yes, ma'am.

9 Q Mr. Armstrong, I'm handing you what's been entered
10 into evidence -- I'll hand you two at a time, State's
11 Exhibit Nos. 24 and 13. Can you, please, identify these
12 items?

13 A State's Exhibit No. 13, again, has an outer bag with
14 my initials and the date where I sealed. And the inner
15 bag, also, has my initials and the date. It, also, has
16 another bag with the item number, and my initials, and the
17 weight of the substance. And that is item THR-2A.

18 State's Exhibit No. 24, once again, the outer bag
19 with my initials and the date where I sealed, along with
20 my initials and the date on the inside where I cut the
21 bags open, and the ones with item numbers, and my
22 initials, and the weights of the items as well.

23 Q Did you check these items out of the property and
24 evidence room and perform tests on them?

25 A Yes, ma'am, I did.

1 Q And did you reseal them and take them back to the
2 property and evidence room?

3 A Yes, ma'am, I did.

4 Q I'm, also, going to hand you what's entered into
5 evidence as State's Exhibit Nos. 8, 12, and 14. Can you,
6 please, identify these?

7 A Yes, ma'am, I can. Once again, all the outer bags
8 are with my initials and the dates on those. This State's
9 Exhibit No. 12, it has my signature and the date, which I
10 had, actually, separated some packaging.

11 Q And did you perform a test on these three items?

12 A On State's Exhibit Nos. 8 and 14, I did, yes, ma'am.
13 State's Exhibit No. 12 is the packaging, which I removed
14 from another item, which is THR-6.

15 Q Did you return these items back to property and
16 evidence after you analyzed the ones that you analyzed?

17 THE COURT: Now, there's no issue about that,
18 Solicitor.

19 BY MS. MONTES:

20 Q Did you produce a report once you analyzed this?

21 A Yes, ma'am, I did.

22 Q I'm going to hand you what's been marked as State's
23 Exhibit No. 29 for identification. Can you, please,
24 identify this, and did you sign it?

25 A Yes, ma'am, I can. It's a copy of my lab report with

1 my signature for these items.

2 MS. MONTES: Your Honor, we'd move State's Exhibit No.
3 29 into evidence.

4 THE COURT: Any objection?

5 MR. MACKENZIE: Only what I've previously stated,
6 Your Honor.

7 THE COURT: All right. Subject to your objection.
8 (WHEREUPON, State's Exhibit No. 29 was admitted into
9 evidence.)

10 BY MS. MONTES:

11 Q Mr. Armstrong, please, publish your results.

12 A THR-1 was two bags containing plant material. I
13 found that to be marijuana with a weight of 27.07 grams.

14 Item THR-2A, I found it to be a bag containing plant
15 material. And no marijuana was found.

16 Item THR-2B, it was a bag containing 32 white
17 tablets. I found that to contain methylene dioxy
18 methamphetamine with a weight of 6.25 grams.

19 Item THR-5, two bags containing a rock substance. I
20 found that to contain crack cocaine, which is, also, known
21 as cocaine base with a weight of 39.18 grams.

22 Item THR-6, two bags and plastic with residue. I
23 found those to contain cocaine and no weight.

24 Q Is there another term for methylene dioxy
25 methamphetamine?

1 A It's slang term is known as Ecstasy.

2 Q And is crack cocaine the same thing as cocaine base?

3 A Yes, ma'am, it is.

4 Q Is there any difference?

5 A No, ma'am.

6 Q Is there any difference between cocaine base/crack
7 cocaine and cocaine?

8 A Yes, ma'am, there is.

9 Q What is the difference?

10 A Cocaine is a salt form. And the cocaine base is the
11 base form. The -- you have to take -- it takes cocaine --
12 you have to take and add some, basically, baking soda or a
13 base to it, dissolve it in water, and then it separates
14 out once it is cooked or goes through a heating process.

15 So, basically, it just changes the -- it takes the
16 salt off of it and forms a base form, which is more
17 suitable for smoking then. Basically, it's like an apple
18 in apple pie. You have to take something and add to the
19 apple to generate an apple pie. And it's the same
20 process. It's just a small addition and then it,
21 actually, makes a different product.

22 MS. MONT'S: Thank you.

23 No further questions.

24 THE COURT: All right. Any questions, Mr. Mackenzie?

25 MR. MACKENZIE: Just briefly, Your Honor.

CROSS-EXAMINATION

BY MR. MACKENZIE:

Q The lab reports, do you still have those?

A Yes, sir.

Q Let me ask you about this one. This is State's Exhibit No. 28. This is the one regarding the cocaine?

A Yes, sir.

Q The subject -- the name for the subject is a Daniel Lopes; is that correct?

A That's correct.

Q That's the only name listed under "Subject" --

A Yes, sir.

Q -- is that correct?

A That's correct.

Q Okay. And then under the other -- this is State's Exhibit No. 29 --

A Yes, sir.

Q -- regarding the other substances found. The only name listed under "Subject" is confidential --

A Yes, sir.

Q Is that correct?

A That's correct.

MR. MACKENZIE: Thank you.

That's all I have.

MR. SCALZO: Thank you, Your Honor.

CROSS-EXAMINATION

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BY MR. SCALZO:

Q Mr. Armstrong, what you just described both for the weapons as well as the drugs is you perform, basically, a scientific application of some sort of testing?

A Yes, sir.

Q And part of what you're doing is you're applying a method -- or a scientific method that can be reproduced at another date?

A Yes, sir.

Q Correct?

A Correct.

Q And so you're relying on methods that can be reproduced that other people have used before that say that they're reliable?

A That's correct.

Q All right. Can you explain for me if you look at, I guess, that first lab report with Mr. Lopez --

A Okay.

Q Well, before I ask you about that, I guess I have to ask you one other question. Part of the scientific method, as we just discussed, is that it could be verified --

A Yes, sir.

Q -- is that fair to say?

1 A That's true.

2 Q And one of the ways of verification is having
3 somebody else to verify what's been done?

4 A That's true.

5 Q Okay. Now, looking at that report, explain to me
6 what is meant by this sentence, These examinations were
7 conducted under your assurance that no examinations of
8 evidence submitted in this case have been or will be
9 conducted by any other laboratory or agency. And that's
10 in your report --

11 A Yes, sir.

12 Q Can you explain that? It seems like it's saying
13 don't have it reviewed by anybody else.

14 A Oh, no, sir. This is, actually, a statement for the
15 officers so they're not going out and searching for an
16 answer. They submit it. We give them our findings.
17 They're not going out and submitting it to different labs
18 until one lab gives them an answer they may want.

19 Q Okay.

20 A We're only -- we present our report. That's our
21 report. And our data is, also, peer reviewed. So there's
22 more than one chemist, actually, looking at the evidence
23 as well. So when all that is processed from their -- from
24 our notes, the report is generated. Then that report goes
25 out with that statement stating that we understand that

1 you did not send this to someone else to try to get the
2 results you're looking for.

3 Q Okay. So, in other words, what you're saying is
4 before you accept that item to be processed, you want them
5 to say, look, we didn't send this to anyplace else?

6 A Correct.

7 Q But what it's not saying is that once you analyze it,
8 they can't go have it analyzed by somebody else --

9 A Oh, if someone else needs to analyze it from --
10 especially from a defense prospect, that's no problem
11 whatsoever.

12 Q All right. I wanted to make sure I understood what
13 that meant.

14 A No problem.

15 Q My other question would be, the method by which you
16 analyze the drugs -- and let's talk about the report on
17 Mr. Lopez with regard to -- I guess it's State's Exhibit
18 No. 5 -- yes, State's Exhibit No. 5?

19 A Yes, sir.

20 Q Am I correct in saying that when you're analyzing to
21 figure out what a substance is, if it's what you believe
22 it to be, you take a sample? How do you do that? Can you
23 explain how you do that?

24 A Yes, sir. When I first receive the item, I inventory
25 the contents. If it's in a bag, I make a note that it's a

1 bag containing, and then whatever is inside. We then -- I
2 then take that substance and weigh just the substance, not
3 weighing the bag, not our container, just weigh the
4 substance. Then we take a small sample off of there and
5 do a chemical spot test, and then an instrumental test for
6 confirmation. And then we seal that item back and take it
7 back to property and evidence.

8 Q When you say a "small sample," how much of a sample
9 are we talking about?

10 A Thousandths of a gram.

11 Q Thousandths of a gram. And is it always measured, or
12 do you just take a little piece out?

13 A It's really like a little speck of residue. If we
14 just -- you can't really see -- and put on our chemical --
15 our instrumentation to do the analysis.

16 Q All right. And do you do more than one of those
17 samples, or only one sample?

18 A We just do one, if everything looks to be in a
19 uniform manner.

20 Q And when you say it "looks to be," you're saying with
21 your eyes and looking at it, it all looks to be --

22 A All looks to be the same.

23 Q -- a white powder, so to speak?

24 A Yes, sir.

25 Q Okay. And without a chemical analysis, you can't

1 necessarily visually say that's cocaine and that's -- that
2 other white powder is not cocaine?

3 A Right. They have to be tested.

4 MR. SCALZO: All right. Thank you.

5 THE COURT: Thank you, sir.

6 Step down.

7 MS. MONTS: Your Honor, we ask that this witness be
8 excused.

9 THE COURT: Any objection?

10 MR. MACKENZIE: No objection.

11 MR. SCALZO: No, sir.

12 THE COURT: Thank you, sir.

13 THE WITNESS: Thank you.

14 MS. MONTS: Your Honor, that would be the State's
15 case.

16 THE COURT: Take the jury out for a minute, please.
17 (WHEREUPON, the jury was excused from open court at
18 approximately 10:27 a.m.)

19 MOTIONS

20 THE COURT: All right. Any motions, Mr. Mackenzie?

21 MR. MACKENZIE: Thank you, Your Honor.

22 I want to make a motion for directed verdict on the
23 charge of trafficking in crack cocaine. There's been no
24 proof offered by the State that Mr. Nelson was in actual
25 or constructive possession of the crack.

1 think it all is enough to give the jury a question for
2 them to decide upon.

3 MR. MACKENZIE: There's more to the Heath case, if I
4 may.

5 That's proof that he had access to the house. The
6 Supreme Court of South Carolina says, It is arguable the
7 appellant merely had right of access to the area where the
8 crack was found, not actual dominion and control of the
9 property. That's what we have here.

10 In the Heath case, it was proven that the man,
11 actually, lived in the house. And that wasn't enough.
12 And we don't have that here. And there's no proof
13 that he was ever even at the house on the day in
14 question.

15 THE COURT: I deny your motion. I think there's
16 sufficient evidence to go forward.

17 MR. MACKENZIE: Thank you.

18 THE COURT: All right. Mr. Scalzo.

19 MR. SCALZO: Judge, two issues. When State's Exhibit
20 No. 28 was moved in, the lab report on the drugs that are
21 related to my client, I said without objection. I want to
22 make it clear I still object to the drugs, though, if --
23 for the record, I don't want that to waive somehow that
24 issue --

25 THE COURT: I understand.

1 MR. SCALZO: -- or my objection to the drugs. I,
2 obviously, will renew my prior motions on suppression.
3 And to the extent that it's necessary to make a motion for
4 a directed verdict to preserve any of those motions, I'll
5 make that at this point, too.

6 THE COURT: All right. I deny that.

7 Now, you have some testimony?

8 MR. MACKENZIE: Yes, sir, Your Honor.

9 THE COURT: Bring the jury in.

10 (WHEREUPON, the jury came into open court at
11 approximately 10:35 a.m.)

12 THE COURT: Mr. Mackenzie.

13 MR. MACKENZIE: Thank you, Your Honor.

14 Ruthie Tate.

15 THE CLERK: Ms. Tate, if you'll come forward, please.

16 Pause at the end of the bench.

17 Please place your left hand on the Bible and raise
18 your right hand.

19 WHEREUPON,

20 IDA RUTH TATE,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please be seated.

24 Please state your full name for the record.

25 THE WITNESS: Ida Ruth Tate.

DIRECT EXAMINATION

BY MR. MACKENZIE:

Q Ms. Tate, where do you work?

A Tate Real Estate.

Q And what is Tate Real Estate?

A It's a real estate company that does property management and, also, works with the buying and selling of homes.

Q And do you lease apartments to people?

A Yes.

Q What's your position there?

A Property manager and broker in charge.

Q And what are some of your duties there?

A Collect rent, help people find homes, take applications, screen applications, interview perspective tenants.

Q Do you have -- do you rent some property located on [REDACTED] in Mauldin?

A Yes.

Q What is that property?

A It's a condo.

Q And did you ever lease that apartment to Mr. Octavius Nelson?

A Yes.

Q Excuse me. It's a condo?

1 A Yes.

2 Q And when was that? Do you remember approximately?

3 A I believe it was in 2002.

4 Q And as part of your business practices there at Tate
5 Real Estate, do you keep certain records about who your
6 tenants are?

7 A We do.

8 Q Do you keep copies of rental agreements, and things
9 like that?

10 A We do.

11 Q Do you keep copies of receipts for rent paid, and
12 things like that?

13 A Yes.

14 Q And are those the sort of things that you keep on a
15 regular basis?

16 A Yes.

17 Q Those sorts of records?

18 A Yes.

19 Q And are those the sort of records that you keep
20 during the normal course of business?

21 A Yes.

22 Q Did you have a rental agreement with Mr. Octavius
23 Nelson?

24 A Yes.

25 MR. MACKENZIE: I'd like to have this marked.

1 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
2 identification only.)

3 BY MR. MACKENZIE:

4 Q Ms. Tate, this has been marked as Defendant's Exhibit
5 No. 3. Can you identify those documents?

6 A This is a renewal of residential rental agreement
7 with Octavius. And it's dated April 5 of '05. The
8 original agreement was in 2003. I think he lived there in
9 '02. I would have to check the receipts.

10 Q Okay. This is a rental agreement signed by
11 Mr. Octavius Nelson?

12 A Yes, as far as I know.

13 Q Does it have his name on it?

14 A Yes.

15 MR. MACKENZIE: I'd like to offer this into evidence
16 at this time, Your Honor.

17 THE COURT: Any objection?

18 MS. MONTS: No, Your Honor.

19 THE COURT: Without objection, it's in.

20 (WHEREUPON, Defendant's Exhibit No. 3 was admitted
21 into evidence.)

22 BY MR. MACKENZIE:

23 Q And, Ms. Tate, do you -- I believe you already
24 testified that you keep records of receipts for rent paid
25 from your tenants; is that correct?

1 A Yes.

2 Q And did you keep receipts of rent paid by
3 Mr. Octavius Nelson?

4 A Yes.

5 MR. MACKENZIE: I'd like to have this marked.

6 (WHEREUPON, Defendant's Exhibit No. 4 was marked for
7 identification only.)

8 BY MR. MACKENZIE:

9 Q This is Defendant's Exhibit No. 4. Can you identify
10 that?

11 A This is a letter that I sent to you back in 2007, at
12 which point you requested the rental receipts for
13 Octavius. And I sent you a list of the rents that he had
14 paid from 2002 all the way up to 2006. And along with
15 that, I, actually, sent you copies of the receipts.

16 MR. MACKENZIE: Thank you.

17 I'd like to offer that into evidence at this time,
18 Your Honor.

19 THE COURT: Any objection?

20 MS. MONTIS: No, Your Honor.

21 THE COURT: Without objection, it's in.

22 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
23 into evidence.)

24 BY MR. MACKENZIE:

25 Q So Octavius was a tenant from the year 2002 to 2006;

1 is that correct?

2 A Yes.

3 MR. MACKENZIE: Thank you.

4 I don't have any other questions.

5 THE COURT: Do you have any questions, Mr. Scalzo?

6 MR. SCALZO: No, sir.

7 THE COURT: All right. Solicitor.

8 CROSS-EXAMINATION

9 BY MS. MONTS:

10 Q Ms. Tate, who were the tenants listed on that
11 agreement?

12 A Octavius Nelson and Bobby Nelson.

13 Q And did you know Octavius Nelson and Bobby Nelson?

14 A Yes. I knew them both.

15 Q Did you -- how often would you see them there?

16 A I would see -- I don't know. I really can't answer
17 that question very definitely. Sometimes, Octavius would
18 come, sometimes Bobby would come and pay the rent. It's
19 not atypical for the population that I serve for other
20 people than the lease holders to pay the rent.

21 Q And was the rent paid in cash?

22 A Yes.

23 Q Every month for all those years?

24 A Yes.

25 Q And so you -- give me a rough idea of how often you

1 would see Octavius and Bobby?

2 A Well, the rent is due monthly. So they would come in
3 monthly and pay the rent. Sometimes, I was there
4 sometimes, I wasn't. If you look on the receipts, some --
5 most of the receipts were signed by my assistant most of
6 the time.

7 Q So would you see them on a weekly basis?

8 A No, monthly.

9 Q So you only saw them once a month?

10 A Right, only when the rent was due. And the rent was
11 due the first of the month.

12 MS. MONTS: Thank you.

13 Nothing further.

14 MR. MACKENZIE: Just briefly..

15 REDIRECT EXAMINATION

16 BY MR. MACKENZIE:

17 Q Is the business office at the same location as the
18 apartment?

19 A No, it's not.

20 Q Where is the business office?

21 A It's 128 East Broad Street.

22 Q In downtown Greenville?

23 A Yes.

24 Q The apartment is in Mauldin?

25 A Yes.

1 MR. MACKENZIE: Thank you.

2 THE COURT: Thank you.

3 Step down.

4 Do you want to excuse this witness?

5 MR. MACKENZIE: Yes, sir, Your Honor.

6 MR. SCALZO: No objection, Judge.

7 MS. MONTS: No objection.

8 THE COURT: Okay.

9 MR. MACKENZIE: Kathleen Nelson [sic].

10 THE CLERK: Ma'am, please, place your left hand on
11 the Bible and raise your right hand.

12 WHEREUPON,

13 KATHLEEN S. BURNS,
14 after first having been duly sworn, testified as follows:

15 THE CLERK: Thank you.

16 Please be seated.

17 Please state your full name for the record.

18 THE WITNESS: Kathleen S. Burns.

19 DIRECT EXAMINATION

20 BY MR. MACKENZIE:

21 Q Ms. Burns, I think I called you Ms. Nelson.

22 Are you Octavius' mother?

23 A Yes.

24 Q Do you live here in Greenville?

25 A Yes.

- 1 Q And do you work?
- 2 A No, I don't. I --
- 3 Q Are -- I'm sorry. Go ahead.
- 4 A I'm sorry. I resigned from my job in '04 to take
- 5 care of my son, Bobby, who deceased the other day.
- 6 Q I'm sorry for your loss.
- 7 A Thank you.
- 8 Q And are you married to Charles Burns?
- 9 A Yes, I am.
- 10 Q Now, did you used to live at [REDACTED]
- 11 [REDACTED]?
- 12 A Yes, I did.
- 13 Q Who owned that house in January of 2005?
- 14 A Charles and I.
- 15 Q What neighborhood is that in?
- 16 A Belle Meade.
- 17 Q When did you purchase that house?
- 18 A 1993.
- 19 Q How long did you live there?
- 20 A About 14 years, 13 or 14 years.
- 21 Q Were you and Charles the legal title owners to that
- 22 house?
- 23 A Yes, we were.
- 24 Q Were you the legal title owners in January of 2005?
- 25 A Yes, we were.

1 Q Why did y'all leave that house?

2 A Well, in the event that I resigned from my job and
3 there was one income -- and I was taking care of my son,
4 we no longer could afford to make the note.

5 Q Did the mortgage company foreclose?

6 A Yes, they did.

7 Q And then the house was sold?

8 A Yes, it was.

9 MR. MACKENZIE: I'd like to have this marked.

10 (WHEREUPON, Defendant's Exhibit No. 5 was marked for
11 identification only.)

12 BY MR. MACKENZIE:

13 Q Ms. Burns, this is Defendant's Exhibit No. 5. Can
14 you identify what that is?

15 A Yes.

16 Q Can you tell us what it is?

17 A This is a real estate deed and title of the property.

18 Q Is that the title to your house at [REDACTED]

19 [REDACTED]?

20 A Yes, it is.

21 MR. MACKENZIE: I'd like to offer that into evidence
22 at this time.

23 THE COURT: Any objection?

24 MS. MONTS: No, Your Honor.

25 THE COURT: Without objection, it's in.

1 (WHEREUPON, Defendant's Exhibit No. 5 was admitted
2 into evidence.)

3 BY MR. MACKENZIE:

4 Q Who lived at that house with you and Charles?

5 A My invalid son, Bobby, Jr.

6 Q Did Octavius live there?

7 A No.

8 Q Did he ever live there?

9 A At a time, a younger age.

10 Q Was he living there in January of 2005?

11 A No.

12 Q Did he still receive some mail there?

13 A Yes, he did.

14 Q Who had bedrooms in that house?

15 A My son, Bobby, and my husband and I.

16 Q Did Octavius have a bedroom in the house?

17 A No.

18 Q Was there some sort of bed on the living room floor,
19 or something?

20 A There was.

21 Q Okay. What was the purpose of that?

22 A Because Octavius would come by from time to time.
23 And he would help me take care of his brother. And in the
24 event, we put a bed in the living room when he would come
25 by for him to rest. Sometimes, Bobby would be coming in

1 late from dialysis. And Tay would be there to help him --
2 to assist him in the house.

3 Q Where did Octavius live?

4 A He lived on [REDACTED] with his dad.

5 Q In Mauldin?

6 A In Mauldin, South Carolina.

7 Q How often would Octavius come by the house?

8 A About twice a week.

9 Q Did he have a key to the house?

10 A Yes, he did.

11 Q Did he have his own room?

12 A No.

13 Q Did he leave a lot of belongings and stuff there?

14 A No, no more than the games he played while he was
15 there, video games.

16 Q Video games. Now, I want to take you back to the
17 morning of January the 21st of 2005, the day when all this
18 happened. Who was present in your house that morning?

19 A Charles, and my grandbaby, and I.

20 Q What about Octavius' brother?

21 A That's what I said, his brother, Bobby.

22 Q Okay. But was Octavius present?

23 A Yes, he was.

24 Q Was there -- did anybody else come over to the house
25 that day?

- 1 A A friend of Tay's.
- 2 Q All right. Who was that?
- 3 A That was Mr. Goodman.
- 4 Q Okay. James Goodman?
- 5 A Yes.
- 6 Q How long --
- 7 A But I didn't know him at that time as Mr. Goodman.
- 8 Q How long had Octavius been there?
- 9 A I really don't know. Because I had just come in with
- 10 my grandbaby. And Tay was there on the bed asleep. And
- 11 Mr. Goodman came in behind me.
- 12 Q And so what was everybody doing at the house that
- 13 day?
- 14 A My husband was in the room -- the bedroom. And I
- 15 just came in. And Tay was asleep. And I woke him up.
- 16 Q Your husband was in which bedroom?
- 17 A In our bedroom, the back bedroom.
- 18 Q Is that the one at the front of the house, or the
- 19 back of the house?
- 20 A The back of the house.
- 21 Q And where was Bobby?
- 22 A Bobby was in his bed.
- 23 Q Is that the bedroom at the front of the house?
- 24 A The back of the house across from mine.
- 25 Q Were there any drugs in the house?

1 A Not that I know of.

2 Q What was Octavius doing?

3 A He was asleep.

4 Q What was Mr. Goodman doing?

5 A He was standing there waiting for me to wake up Tay.

6 And he was sitting down.

7 Q Where was he? What room was he in?

8 A He was in the living room -- living room, but first

9 in the dining room.

10 Q Was he over in the kitchen?

11 A Not to my knowledge.

12 Q Did you see him using the telephone?

13 A No.

14 Q I'm talking about Mr. Goodman, not Octavius.

15 A No.

16 Q So how long did you stay at the house that day?

17 A Probably about an hour. And I forgot my baby's apple

18 juice, along with a lot of other things. And I was going

19 to go back to the store.

20 Q And did you go to the store?

21 A Yes. I didn't get -- I didn't make it to the store.

22 Q What happened?

23 A Well, I was pulled over by an unmarked car.

24 Q When you left the house, was Mr. Goodman still at the

25 house?

1 A No. He had left.

2 Q He left earlier than you?

3 A Yes, he did.

4 Q Do you remember how much earlier?

5 A About 15 minutes.

6 Q When you left the house, was Octavius still at the
7 house?

8 A No. He had went to get him some lunch at the Waffle
9 House. He asked my husband and I did we want anything.
10 And we told him, no.

11 Q All right. So what happened after you got pulled
12 over?

13 A Well, the officer asked me to return to the house,
14 which I did. And when I drove in the driveway and got out
15 of the car, then several officers came in my driveway.
16 And one of them asked me that -- we have your son. You
17 have a son named Octavius. We have your son. Do you know
18 that he was selling drugs? I said, no, my son do [sic]
19 not sell drugs.

20 Q Did they ask you for consent to search the house?

21 A Yes, they did. They asked me could they look in the
22 house. I said, sure, because there are no drugs.

23 Q And did they search the house?

24 A Yes, they did.

25 Q Now, you've been here throughout the course of this

1 trial; right?

2 A Yes.

3 Q Now, the State has presented several items into
4 evidence that allegedly were taken from your house. Have
5 you heard that testimony?

6 A Yes, I did.

7 Q All right. There's been evidence that there was some
8 drugs, and some guns. What do you have to say about those
9 items being in your house?

10 A Well, first of all, I did not know that they were in
11 my house. Because I do not believe that my son sells
12 drugs. And I do believe that if he did, he would have
13 told me. And the fact of that, the only thing that I --

14 MS. MONTS: Objection, Your Honor, to any
15 speculation.

16 THE COURT: Yes.

17 Hold on just a minute.

18 Mary, call down and tell Judy to tell them to quit
19 drilling. They must be in the mail room.

20 THE CLERK: Okay.

21 THE COURT: I sustain the objection.

22 Move on, please.

23 BY MR. MACKENZIE:

24 Q Who did those items belong to?

25 A I do not know.

1 MR. MACKENZIE: All right. Thank you.

2 That's all I have.

3 THE COURT: Do you have any questions, Mr. Scalzo?

4 MR. SCALZO: No, sir.

5 THE COURT: All right. Solicitor.

6 CROSS-EXAMINATION

7 BY MS. MONTIS:

8 Q Ms. Burns, how often did you go through your house?
9 Would you go through every room in the house or where --
10 when you would come home -- you said you weren't working.
11 You were home taking care of Bobby. And Bobby lived in
12 the -- or was his bedroom the one off of the kitchen?

13 A Yes, it was.

14 Q And so you were home all day -- or how much of the
15 day were you home?

16 A Well, I was in and out. And my main focus was Bobby.
17 And I didn't do an inventory on my home. There was young
18 folks at our house all the time --

19 Q Okay, okay. That's enough. Did you ever go in the
20 kitchen?

21 A Yes, I did.

22 Q Did you ever go in Bobby's room?

23 A Yes, I did.

24 Q What was Bobby's condition? Could he move around by
25 himself?

1 A No, baby.

2 Q And --

3 A He needed assistance.

4 Q And how often would you go in the living room where
5 the bed was that Octavius would occasionally sleep in?

6 A Well, I would go in there sometimes just passing
7 through it.

8 Q And would you ever go into the room that there was
9 some damage in?

10 A No. We kept that door shut.

11 Q And how often would your grandbaby be at the house?

12 A She came every weekend.

13 Q Would she be in the room -- in the living room?

14 A Sometimes.

15 Q Would she be in the kitchen?

16 A Sometimes.

17 Q And what items were kept in the china hutch in the
18 dining room area?

19 A My china, my crystal, and my silverware.

20 Q And didn't Octavius keep some of his mail there?

21 A Yes, he did.

22 Q And how often would Tay come over to help with his
23 brother, or to watch video games?

24 A About twice a week.

25 Q And you said Bobby had been living with you since

1 approximately 2004. Is that -- maybe I said that wrong.
2 How long had he been living there?

3 A Bobby always lived with me.

4 Q Bobby always lived with you?

5 A Uh-huh.

6 MS. MONTES: Thank you.

7 Nothing further.

8 MR. MACKENZIE: Can I -- just briefly?

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MR. MACKENZIE:

12 Q You said on cross that there were young people at the
13 house all the time?

14 MS. MONTES: Your Honor, that was unresponsive.

15 THE COURT: Hold on.

16 What's the question?

17 MR. MACKENZIE: I asked her -- she had made a
18 statement about -- on cross, she said that -- words to the
19 effect that there were young people at the house all the
20 time. I was going to ask her to explain that.

21 THE COURT: Go ahead.

22 BY MR. MACKENZIE:

23 Q Would you, please, explain that?

24 A They were friends of Bobby's and Tay's. They would
25 come by often to visit Bobby, and to visit with Tay. They

1 would play games, video games, and just relax, and just do
2 the stuff that young folks do.

3 Q Did you see any of these people using illegal drugs
4 in your house?

5 A No, sir.

6 Q Did you see --

7 A They were respectable adults, and young adults.

8 Q Did you see them manufacturing any illegal drugs?

9 A No.

10 MR. MACKENZIE: Thank you.

11 THE COURT: Step down.

12 MR. MACKENZIE: Octavius Nelson.

13 THE CLERK: Sir, place your left hand on the Bible
14 and raise your right hand.

15 WHEREUPON,

16 OCTAVIUS LOUIS NELSON,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Please be seated.

20 State your full name for the record.

21 THE WITNESS: Octavius Louis Nelson.

22 DIRECT EXAMINATION

23 BY MR. MACKENZIE:

24 Q Octavius, how old are you?

25 A 29.

1 Q How old were you when this incident occurred?

2 A 25.

3 Q Do you live here in Greenville?

4 A I stay in Conestee.

5 Q Conestee?

6 A Yes, sir.

7 Q Kathleen is your mother; is that correct?

8 A Yes.

9 Q Your father is Bobby?

10 A Yeah. He passed away last year. And my stepfather,
11 Charles Burns, is present right now.

12 Q How far did you go in school?

13 A I just recently graduated from ECPI in February with
14 an Associates of Science Degree in Computer Electronics
15 Engineering Technology. And I worked two jobs trying to
16 make it.

17 Q What is ECPI?

18 A It's a school of technology. They, also, have a
19 medical course right down -- off of 85 across from Chiefs.

20 Q And so where are you working now?

21 A I work for a place called the List Company/Quick
22 Candles. And I work for Frito Lay part-time in the
23 afternoons.

24 Q What do you do at those jobs?

25 A Well, for Quick Candles, I ship, pack, receive, do

1 quality checks, fill orders. And at Frito Lay, I prep
2 trucks, load them and unloaded them, check for quality.

3 Q I want to ask you about the house located at [REDACTED]
4 [REDACTED] That's your mother's house; right?

5 A Right, my mother and my stepfather.

6 Q Did you used to live there?

7 A Yeah, when I was much younger like my middle school
8 years. I had left the house around about 18 dating and
9 stuff, and caught myself living with, you know, females or
10 whatever. But I didn't stay after then. That's why I
11 always kept my address there, because I be [sic] gone.
12 And that way, I could check it. My mom might call me and
13 let me know if I had some mail, or something.

14 Q Did you live there in the year 2005, in January?

15 A No, I did not, sir.

16 Q All right. But you said you still received mail
17 there; is that correct?

18 A Right. Because when I had moved to the apartment in
19 Mauldin, we were getting our mailbox broken into. Even
20 the mail courier advised us, you might not want to send
21 your mail here.

22 So I just left it there and never ever changed it.
23 I've had that address since I got my permit and my license
24 when I was 15. So I never just thought about changing it,
25 I mean.

1 Q Okay. There were some papers and so forth that were
2 entered into evidence that I'd like to ask you about.
3 This -- I'm referring to State's Exhibit No. 23. These
4 were some papers that were found at the house.

5 A Right.

6 Q Now, here is one from the Employment Security
7 Commission --

8 A Right.

9 Q -- that is addressed to Octavius Nelson, [REDACTED]
10 [REDACTED] in Greenville; is that correct?

11 A Yes, sir.

12 Q So why did you have this mail coming to your house --
13 I mean, to the [REDACTED] house?

14 A Because, like I said, the mailbox in Mauldin kept
15 getting -- the whole box was getting vandalized. So I
16 just kept it there. Some of those -- that mail is,
17 actually, from '01, and even further than that.

18 Q All right. Here is another piece of paper from
19 Wachovia Securities that has your address listed as P.O.
20 Box 6935?

21 A Yeah. That's when we got an alternate box, because
22 we started getting a few problems around the house where
23 my mother lived at. So we got that. That's when I,
24 actually, caught myself getting some stocks and stuff,
25 trying to learn about the stock market.

1 Q So you, also, had a post office box where you --

2 A No. That was my mother's. I just used it. We had
3 some people messing with the mailbox in the neighborhood.

4 Q Now, here is another statement from BB&T addressed to
5 you at your P.O. box. What's the date of that statement?

6 A December 26, '01. That's when I was currently
7 employed at Best Buy.

8 Q That's dated 2001?

9 A Yes.

10 Q Here is a letter addressed to you at [REDACTED]

11 [REDACTED] from a Cory Shell.

12 A Yes, sir.

13 Q What's the date on that letter?

14 A 2001.

15 Q Now, what was the address on your driver's license in
16 the year 2005?

17 A It was [REDACTED]

18 Q Okay. Now, I want to ask you a little bit about the
19 house. Did you have a room at the house in 2005?

20 A No, I did not.

21 Q Did you sometimes come around to the house?

22 A Oh, yeah, to check on my brother about twice a week.
23 Because he started having real bad sugar level spikes. We
24 had to rush him to the hospital. It would get like 600,
25 close to 700. And he had a bad ulcer on his foot.

1 So them nights, I would spend the night, if it got
2 real bad. See, a lot of times, I had friends that would
3 come around all the time. They'd be there sometimes when
4 I wasn't there. Because the ramp going into the house --
5 he was in a wheelchair -- it was too steep for my mother
6 to push it to let him in. I had two that stay down the
7 street and couple of them used to come by, including
8 Mr. Goodman.

9 Q Did you sometimes spend the night at the house?

10 A Yes. When the sugar levels got real, real high and
11 they had to go rush him to the hospital, I would come back
12 and stay and watch over him.

13 Q And so when you stayed at the house, where did you
14 sleep?

15 A I would rest on the air mattress in the living room.

16 Q How long did you live at [REDACTED] in Mauldin?

17 A From April 2002 to about September 2006. That's when
18 me and my father got a house in Conestee.

19 Q And Ms. Tate came to see us and showed us rental
20 agreements, and some rent receipts. Have you seen these
21 items before?

22 A Yeah. When I go pay the -- you know, I seen the
23 lease agreement. I had to keep signing them. And the
24 receipts, I seen them because you have to sign off on
25 them.

1 Q This is Defendant's Exhibit No. 3. Is that the lease
2 agreement that you signed?

3 A Yes.

4 Q And a renewal?

5 A Yes.

6 Q And you've seen these rental receipts?

7 A Yes. Because she didn't charge me for the last month
8 when we moved to Conestee.

9 Q Who paid the rent, you or Bobby?

10 A I did. For a few times that I wasn't employed, he
11 paid for it. But, other than that, I paid for it.
12 Because he was getting disability, so he would help out.
13 Because it was my place.

14 And my father, he got hurt. And about a year later,
15 he moved in with me. But I had put him on the lease just
16 in case. Because she asked me any persons you might think
17 I need to know about. He had to have hip surgery in 2005,
18 around the time I was locked up.

19 Q This apartment in Mauldin, is that where you lived?

20 A Yes.

21 Q Is that where you slept every night?

22 A Other than the few times we rushed my brother to the
23 hospital.

24 Q Now, you said you came around [REDACTED] Road about a
25 couple times a week?

1 A Yeah. A couple times a week, unless it was just they
2 needed for me to come sooner than that.

3 Q Did you have a key to the house?

4 A Yes, I did.

5 Q Did you have your own room in the house?

6 A No, I did not, sir.

7 Q Did you leave a lot of belongings there and stuff?

8 A No. Just like a change of clothes. If I came and
9 spent the night, a change of clothes and stuff like that.

10 Q All right. So I want to take you back to January the
11 21st of 2005. Where were you that day?

12 A That day, I was in there laying down. Because my
13 brother had another spike in his sugar last -- that night
14 before. And we got up to go to the hospital. We had to
15 rush him to the hospital.

16 And my mom had came waking me up. And James Goodman
17 was standing right there. And he was like, Get on up,
18 boy. I got on up. My mom walked on back to the bedroom.

19 Q All right. Let me stop you right there. Who is
20 James Goodman?

21 A He was an old friend of mine, who I thought was a
22 friend.

23 Q All right. Who else was present?

24 A Just me and him. My brother was in his bedroom. My
25 stepdad was in the back with my daughter. She's not my

1 biological daughter, but, you know, I've been in her life
2 since she was five months old.

3 Q All right. So about -- was this in the morning? In
4 the afternoon?

5 A I don't really -- I think about lunchtime. I'm
6 really not sure of the exact time.

7 Q Were there any drugs present in the house?

8 A No, not as I know of.

9 Q All right. So what did you do that day?

10 A Well, I had got up. And I seen what time it was. I
11 take blood pressure medicine. So I needed to get me
12 something to eat and take my medicine.

13 And then by that time, he got on the phone and he
14 was talking to somebody --

15 Q Let me stop you right there. Are you talking about
16 Mr. Goodman?

17 A Yes, Mr. Goodman.

18 Q All right. What was your relationship with him?

19 A Just friends. I mean, we were all friends. We would
20 all hang out and stuff, play video games, just, you know,
21 kick the breeze and stuff. Back then, I was smoking
22 marijuana. We'd sit outside and smoke a blunt or
23 something like that. But that was it.

24 Q Now, did you have a cellar telephone, or a mobile
25 phone?

1 A Yes, I did.

2 Q Did Mr. Goodman have a phone?

3 A Yes, he did.

4 Q Did you have two accounts?

5 A No. I had one account with two lines on it.

6 Because, at the time, he asked me, he said, Well, man, I
7 come and help out with your brother. He asked me about a
8 phone.

9 I said, Man, I ain't got no money for that.

10 He said, I'll get you one. Because the person I had
11 one with last time didn't pay the bill on time.

12 So I was like, okay. I took the phone. That's how I
13 had my cell phone. Because all I did was just call back
14 to my mama's house, and talk to my daddy, and stuff like
15 that, and a little friends.

16 Q All right. So are you saying you got a cellar phone
17 account for Mr. Goodman?

18 A Yeah. I got it, yeah. He said he would pay for the
19 bill. So I got the phone.

20 Q You had one -- you had two accounts, one for yourself
21 and one for Mr. Goodman; is that what you're saying?

22 A One account with two lines on it.

23 Q What were the two lines?

24 A Well, my number was 303-8566, and his was 303-8568.
25 And it says on the bill whose name is on what bill.

1 Because we had to go up there when we got the lines.

2 Q All right. Now, why did you get a cellar phone line
3 for Mr. Goodman?

4 A Because he said he was trying to help by getting me a
5 phone so I could call him in case my brother needed help
6 into the house. And, like I say, I had other neighbors
7 down the street that would do the same thing. But I could
8 call them.

9 Q What were you and Mr. Goodman doing that morning or
10 that afternoon at [REDACTED] Road?

11 A We were just talking. As soon as I got up, he said,
12 Where are you going?

13 I said, I'm going to get me something to eat.

14 He said, Where are you going?

15 I said, I'm going to the Waffle House.

16 So he said, Hold on a second.

17 He was on the phone then. And he said, Where are you
18 going?

19 I said, I'm going right down the street.

20 He said, Could you bring my friend back to me?

21 I said, No problem.

22 As far as I know what he did for a living, he used to
23 gamble a lot, shoot pool, shoot dice. I would go to the
24 Palace and watch him shoot pool and didn't think nothing
25 of it. And then, sometimes, he would meet his friend

1 girl. Because he lived with a woman on the side. So I
2 had did it before and didn't think nothing of it. I never
3 seen no drugs, nothing like that, no cocaine, no crack,
4 nothing.

5 Q All right. You mentioned he was on the telephone?

6 A He was on the telephone.

7 Q His cellar phone?

8 A Right.

9 Q Where was he? Where were y'all in the house?

10 A We was right there in the living room. And he walked
11 back towards the kitchen and came back. Because there
12 would be many times that I would come and he'd be already
13 there like if my mama was gone when she still did work.

14 Q And so why were you going to the Waffle House?

15 A To get me something to eat.

16 Q What did he ask you to do?

17 A He said, I've got a friend who's coming to see me.
18 Could you bring him back to me?

19 I said, No problem.

20 I didn't think nothing of it.

21 Q Did he explain who this friend was?

22 A No. He didn't say nothing.

23 Q Did he say anything about illegal drugs?

24 A No, he did not.

25 Q Did he say anything about any money?

1 A No, he did not.

2 Q Who is this person you were supposed to go meet?

3 A I don't have a clue. He never told me. I didn't
4 ask.

5 Q Well, how were you supposed to meet up with him?

6 A Because he called me -- well, he, actually, chirped
7 me when I was sitting down eating at the Waffle House. He
8 had told me the car that was supposed to be there. I
9 said, Okay.

10 So I was sitting down eating. And then halfway
11 through my meal, I seen the car pull in. So I asked the
12 waitress to give me a box to go. And I got it to go. And
13 I came on out.

14 Q You said "he chirped me." Who chirped you?

15 A Goodman did on the phone, on the Nextel phone.

16 Q What's a chirp?

17 A A walkie-talkie.

18 Q Is that like a direct-connect call?

19 A Yeah, direct connect.

20 Q All right. So what did you do then?

21 A Like I said, I came out of the Waffle House. I
22 looked over there to the car. I went and sat in the
23 truck. I just nodded my head to him. When he looked back
24 at me, I nodded again. He put his car into motion. And
25 that's when I got ready to pull out.

1 Q Did you go over and talk to him?

2 A No, I did not. I did not wave at him. I just nodded
3 my head to him.

4 Q Did you know -- did you recognize the person?

5 A No. I didn't have a clue.

6 Q There's been testimony in this case about a person
7 named Daniel Jesus Lopez.

8 A I never heard of him until all this happened.

9 Q Have you ever seen him before?

10 A No. I haven't, sir.

11 Q Have you ever talked to him on the telephone?

12 A No. I have not, sir.

13 Q When you went to the Waffle House, did you have a
14 gun?

15 A No. I didn't have nothing, other than the money to
16 get my food.

17 Q How much money are we talking about?

18 A Probably \$8 or \$10, something like that. It's what I
19 had left from my change, and I tipped the waitress.

20 Q Did you have \$10,500?

21 A Shoot, no, I ain't never.

22 Q Did Mr. Goodman have -- did you ever see Mr. Goodman
23 with \$10,500?

24 A No, I have not.

25 Q Why did you just -- why did you do what Mr. Goodman

1 asked you to do?

2 A Because, like I said, I never thought nothing of it
3 before. And, like I say, I had watched him shoot pool and
4 stuff, or shoot dice, or play cards. He used to gamble,
5 or go to the Palace. And like other times, he'd meet a
6 friend girl because he lived with a woman. So I didn't
7 think nothing of it. It wasn't nothing usual. There
8 wasn't no -- I wasn't -- if he met somebody, he'd take off
9 and he'd tell me the next day if he -- if he was with some
10 girl. He would call me later on when his girlfriend was
11 gone from the house and tell me about, you know, what him
12 and the girl did. That was it.

13 Q All right. So what happened as you walked out of the
14 Waffle House?

15 A I walked back to the truck. I got inside the truck.
16 And I nodded my head. I did it twice. The dude looked
17 back at me and nodded. And then he put his car in
18 reverse. And I was pulling out.

19 Q All right. So then what happened?

20 A By that -- when that happened, a truck pulled in
21 front of me. And, first, he came right there. And I
22 said, Go ahead. And then he pulled in front of me. Then
23 they came -- and the white car came in the back of me, the
24 one that, I guess, the undercover officer was driving.
25 And they all surrounded me. And they were like, Put your

1 hands up. Put your hands on the steering wheel. Put your
2 hands up.

3 I said, Man, just don't shoot, just don't shoot.

4 He said, Well, stop the car.

5 I said, I can't.

6 Because the car was hard to go into gear.

7 I told him, I said, it's going to roll back when I
8 get out.

9 It -- when one cop got my arm through the door, the
10 other one came and opened the door. I said, Man, just
11 don't shoot me.

12 And then they got me down on the ground. And then
13 the car did roll back. They got in -- another cop got in
14 there. I said, You've got to push it in hard.

15 So he pushed it harder. And the car stopped. They
16 handcuffed me. They picked me up. When they picked me
17 up, they put me in the front seat of a -- I think an
18 Explorer and took me straight down to Donaldson Center.

19 Q All right. Let me stop you right there. What -- was
20 there something wrong with the car?

21 A Yeah. It had a gear shift problem. Later, it got
22 fixed. You had to really push it hard to get it in gear.

23 Q And did you say -- did I hear you say that that's
24 what caused the car to roll back?

25 A Yes. That's exactly what happened. Because it

1 didn't hit the car hard. Because he pulled right up on
2 me.

3 Q Well, what was your reaction when all this --

4 A Man, I was scared to death. I didn't have a clue
5 what was going on. That's why I said, Please don't shoot.
6 They ran up on me with guns and stuff. I was like, Man,
7 just don't shoot. I didn't have a clue what was going on,
8 even at that time.

9 Q Did the police ever ask for your consent to search
10 the house?

11 A No, they did not. They asked me where I lived at
12 when they pulled my license out of my wallet. And I told
13 them I stayed in Mauldin. I told them the exact address.
14 And they put -- they kept my wallet when they got my
15 phone. Because the officer right there was present at the
16 time. And there was a heavy-set tall dude with long hair.
17 They were both the main ones talking to me.

18 Q Now, Octavius, you've been here throughout the whole
19 trial. Now, you've seen all this evidence that was
20 introduced into these proceedings and was allegedly taken
21 from the house on [REDACTED] Road.

22 Now, do you have any knowledge of these guns, and
23 illegal substances, and scales, and powder, and things
24 like that?

25 A No, I do not. This is my first time seeing it.

1 That's why I was in shock when I seen all that stuff. I
2 was like, man, where did this stuff come from? And I even
3 told you from day one, I don't know what they're talking
4 about. I didn't know it was severe until after I was
5 sitting in jail and I had called him through my
6 ex-girlfriend. He was crying on the phone.

7 And I said, What are you crying for?

8 He was like, I'm sorry. I'm sorry --

9 MS. MONTES: Objection, Your Honor.

10 THE COURT: I sustain the objection.

11 BY MR. MACKENZIE:

12 Q Try not to repeat anything somebody else said.

13 A Okay.

14 Q Well, Octavius, where did all this stuff come from?

15 A I don't know. It had to be from him. After I had
16 checked his RAP sheet --

17 MS. MONTES: Objection, Your Honor.

18 THE WITNESS: -- and everything --

19 THE COURT: Hold on.

20 Now, I sustain the objection.

21 Move on, please, sir.

22 BY MR. MACKENZIE:

23 Q Let me ask you this. Why -- what was your reasoning
24 going to the Waffle House?

25 A To get me something to eat.

1 Q Did you have any knowledge about a conspiracy to
2 distribute powder --

3 A No, I did not, sir. I didn't know nothing about none
4 of that.

5 Q Did you know about the crack cocaine that was in the
6 kitchen cabinet?

7 A No, I did not.

8 MR. MACKENZIE: Thank you.

9 That's all I have.

10 THE COURT: All right. Mr. Scalzo, any questions?

11 CROSS-EXAMINATION

12 BY MR. SCALZO:

13 Q You said you'd never met or talked to Daniel Lopez?

14 A No. I did not, sir.

15 Q That's prior to that day, that day, or since --

16 A Never in my life.

17 MR. SCALZO: I don't have any further questions.

18 THE COURT: All right. Solicitor.

19 CROSS-EXAMINATION

20 BY MS. MONTS:

21 Q Mr. Nelson, how long did it take you to get from [REDACTED]

22 [REDACTED] to the Waffle House?

23 A Probably a couple of minutes. It wasn't too far.

24 Q Like two or three minutes, or --

25 A I guess, something like that. It wouldn't take long

1 at all.

2 MS. MONTS: Thank you.

3 Nothing further.

4 THE COURT: Thank you.

5 Step down.

6 MR. MACKENZIE: Your Honor, that's the --
7 Mr. Nelson's case.

8 THE COURT: Now, Mr. Scalzo, do you have anything to
9 present?

10 MR. SCALZO: I don't have any witnesses.

11 So the Defense rests.

12 THE COURT: Anything in reply, Solicitor?

13 MS. MONTS: No, Your Honor.

14 THE COURT: Take the jury out, please.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 11:19 a.m.)

17 MOTIONS

18 THE COURT: Any further motions, Mr. Mackenzie, or,
19 Mr. Scalzo?

20 MR. MACKENZIE: I just want to renew my motion for
21 directed verdict on the one charge. I understand your
22 ruling. I assume you're not going to change it at this
23 point.

24 THE COURT: And, again, I would deny that motion.

25 MR. SCALZO: And I'll just renew my prior motions,

CLOSING ARGUMENTS

MR. MACKENZIE: Thank you, Your Honor.

May it please the Court.

I want to thank you all for your time and attention during this trial. When I was thinking about this trial last night as I was thinking about what I want to talk to y'all about, I was thinking about my mailman. Some of you probably know that in this country sometimes drugs are illegally distributed and delivered by the United States mail. Now, that didn't happen in this case. Nobody is alleging that. But that does happen sometimes. And, sometimes, the drugs go through from one location to another. And they get through sometimes. There's an attempted delivery, and the drugs are intercepted. And when that happens, the people that are responsible are arrested.

But when that happens, the mailman is not arrested, or the UPS man, or the Federal Express man who delivers the drugs is not arrested. And do you know why that is? That is because he didn't have knowledge. He didn't know that what he was delivering was illegal drugs. It would be absurd to arrest the mailman when he's got so many packages to deliver and he doesn't know what the contents of the packages are.

Now, that's not a perfect analogy to what's going on

1 here, except on the element of knowledge. I think that's
2 a very good analogy on that one element. Judge Pyle is
3 going to charge y'all on the law. He's going to tell you
4 what the law is, and how it applies to this case. He is
5 the authority on that. You must accept the law as he
6 gives it to you. Okay. He is the authority.

7 But I believe that he is going to charge you that
8 regarding the trafficking of the powder cocaine charge; in
9 order to find the Defendant guilty, you have to find that
10 he knowingly -- the key word knowingly -- aided or
11 conspired to deliver, or bring into this state over 400
12 grams of powder cocaine. On the trafficking in crack
13 charge -- trafficking in crack cocaine, I believe that he
14 will charge you words to the effect that you must find in
15 order to convict that the Defendant knowingly possessed
16 over 10 grams of crack cocaine.

17 Now, the State hasn't proven certain things in their
18 case. What the State has proven is that there was a
19 conspiracy. There was a conspiracy. The State has proven
20 that the mysterious Mr. Candela from the Atlanta area, and
21 Mr. Lopez, and Mr. James Goodman conspired to distribute
22 or deliver powder cocaine, over 400 grams. Candela was
23 the source. Lopez brings it up. Goodman is the buyer.
24 That's what was proven.

25 They have, also, proven that somebody possessed crack

1 cocaine at the house at [REDACTED]
2 But what the State has not proven is that Octavius Nelson
3 knowingly conspired or knowingly aided in any of that, or
4 that he knowingly possessed actually or constructively any
5 crack cocaine.

6 Octavius' position is that he did not know why
7 Goodman sent him to the Waffle House, or why Goodman was
8 asking him to do -- to meet somebody as Octavius was
9 already going to the Waffle House. He didn't know --
10 Octavius' position is that he did not know he was being
11 asked to participate in illegal activities. It is, also,
12 his position that he did not knowingly possess any crack
13 at the house on [REDACTED] Boulevard.

14 Now, I want to make it clear to you. It's not a
15 matter in this case of what he should have known, or what
16 I would have known, or what somebody, you know, down the
17 hall might have known. It's a matter of what did he know.

18 I think that there are certain evidence -- pieces of
19 evidence, certain testimony that we have heard during this
20 case, certain points that were made that showed that what
21 he is saying is the truth. And I want to go over --
22 that's what I want to talk to you about. First of all,
23 I'm going to talk about the powder cocaine, and then I'm
24 going to talk about the crack cocaine.

25 First of all, I think it's very significant that

1 Mr. Nelson did not know Mr. Lopez. He did not know him at
2 all. Now, I think that this was an issue that the
3 deputies were a little reluctant to have to admit in the
4 beginning. But, eventually, it came out and was confirmed
5 by Deputy Marki -- Marchi, as some people call him. He
6 confirmed that there was -- it appeared that Octavius did
7 not know Mr. Lopez.

8 Lopez -- I believe there was some testimony to the
9 fact that Lopez himself had confirmed that through the
10 deputy. That's why Officer Grounsell -- Deputy Grounsell
11 goes undercover. They're not concerned that the person
12 who's going to meet him at the Waffle House will recognize
13 this isn't the right person and the whole thing won't
14 work. They're not worried about that. They know it will
15 go through because Octavius, they know, doesn't know who
16 he's going to meet.

17 Now, I'm sure the State will tell you that it's
18 possible to conspire to do something illegal to somebody
19 that you don't know, and that's true. But that doesn't
20 really fly in this case. Because there's no evidence that
21 Octavius had knowledge of the powder that he was allegedly
22 conspiring to deliver.

23 Another important issue that came up during this case
24 is Octavius, when he goes to the Waffle House, is not
25 armed with a weapon. He doesn't have a gun. I submit to

1 you that nobody goes to a drug deal with 500 grams of
2 powder cocaine without a gun. I think that is evidence
3 that he did not know what he was getting into. There was
4 not a gun on him. There was not a gun on his truck -- in
5 his truck anywhere.

6 There were some firearms found at the house at [REDACTED]
7 [REDACTED]. Again, that is not Octavius' house. He
8 goes there from time to time. That's not his house. No
9 prints are taken off the gun. Those guns are not
10 connected to him in any way.

11 It's interesting to note that Mr. Lopez did have a
12 gun. He knew what time it was. He -- as a matter of
13 fact, he had a loaded gun with the serial numbers erased
14 so the gun couldn't be traced.

15 Another important issue in the case is Octavius
16 didn't have any money. He had like \$8 or \$10. I can't
17 remember what he said. But he didn't have \$10,500.
18 That's the missing -- that's the real missing piece of the
19 puzzle in this case is where is the money. If there's
20 going to be a drug deal, where's the money? That's one of
21 the main reasons the officers are searching the house.
22 They're looking for the \$10,500. The money is never
23 found. Octavius didn't have it, which proves that
24 Octavius is not the buyer.

25 I don't know who the buyer is. One theory is it

1 could be Mr. Goodman. That's not proven. But, certainly,
2 it's not Octavius, because he doesn't have the money.
3 Something else is going on here. Either the State is not
4 telling us, or they simply don't know about it.

5 Now, I'm sure that the State will try to say, well,
6 that may be true. But, see, what really happened is he
7 was attempting to aid the buyer. He was just helping the
8 buyer. That's why he didn't have the money. But, again,
9 that doesn't fly in this case. That's not really enough
10 to convict. Because there's no knowledge. There's really
11 no knowledge in this case that Octavius knew what the deal
12 was.

13 The only real evidence we have on that is his
14 testimony saying, I was going to the Waffle House to get
15 something to eat. Goodman asked me to meet this guy and
16 bring him back. That testimony is corroborated by the
17 fact that he goes in, he gets a bag, and he gets a to-go
18 cup.

19 I think another thing to consider in this case is
20 Octavius' reaction when he is taken down when he's
21 arrested. Now, there was some testimony about the cars
22 and whether they were unmarked. I think this is another
23 issue that the deputies were a little reluctant to come
24 fully forward on.

25 Deputy Moore, I believe it was, this morning

1 testified that all of them were unmarked. And then there
2 was some testimony, also, this morning that the pickup
3 truck was marked. And there was some testimony yesterday
4 that there was a car that was marked, but it was parked
5 over at the hotel. But Moore said this morning, unless
6 I'm mistaken, that all the cars were unmarked. So then
7 the cops jumped out on him. And Octavius is understandably
8 startled.

9 He says there's something wrong with the gear lever.
10 He tries to tell them, if I let go, it's going to roll
11 back. And that's exactly what happens. And so the car
12 rolls back, but no damage was done. The point is, it's
13 not as if he was trying to flee. He didn't break out of
14 the door and take off on foot.

15 Another thing to consider is the telephone records in
16 this case. And all of it is in evidence. Octavius had
17 two accounts -- I'm sorry, excuse me. He had one account
18 for the two lines, one for himself one for this fellow
19 Goodman, who he thinks is his friend.

20 Octavius' number is 864-303-8566, which is this one
21 right here. James Goodman's line is 864-303-8568. And
22 that's this one right here. This is Defendant's Exhibit
23 No. 2. It says right on here, James. This is Octavius'.
24 They both have Octavius' name at the top as the account
25 holder. But then they go on to say one is Octavius, one

1 is James. And you will have all these records to look at.
2 Octavius carried the one that has his name on it. James
3 Goodman carried the other one.

4 Candela, we know his telephone number because it's in
5 Lopez's confession or statement. It's right here
6 404-455-8686, 404-348-3141. Those are in evidence.
7 Lopez, we know his phone number. Marchi testified to it,
8 404-513-2345. Just remember that number, 2345. It's an
9 easy number to remember.

10 If you look at Octavius' phone records, this is the
11 phone that he said he carried. And this is the phone that
12 was recovered from him, 8566, at the Waffle House. This
13 is his phone. There's no question about it. If you look
14 at these phone records, you will not see these other phone
15 numbers. You will not see Candela's number. You will not
16 see Lopez's number, 2345. It's not on here. These are
17 the records from the day of the incident.

18 You will, also, not see James Goodman's phone number.
19 It's not on here either. He's not talking to Candela, or
20 Goodman, or Lopez on the date of the incident.

21 If you look at James Goodman's phone records, you
22 will see these numbers. They're all on here. They're all
23 over here. You will not see Octavius' number. But you
24 will see Candela at -- line 180 is the 3141; 181, 3141.
25 These are Candela. 188, line 202, 215, 219 through 221,

1 226, 231, 233, and 236. That's how many times James
2 Goodman is talking to Candela, the mysterious Mr. Candela
3 from Atlanta.

4 You will, also, see when you inspect these phone
5 records that Goodman is talking to Lopez on the day in
6 question. This is 2345, remember. Remember that number,
7 2345 on lines 218 and 227. James Goodman is talking to
8 Lopez, who's not here. These are all calls from the
9 morning and afternoon of January 21st, 2005.

10 There was a direct-message call. There was testimony
11 there was a direct call, walkie-talkie function -- I'm not
12 sure what you call it -- from Goodman to Octavius on the
13 day in question. That's the only communication between
14 them. As Octavius explained, he was calling to see had I
15 gotten the guy, had I met the guy yet. Again, there's
16 still no proof that Octavius knows what's going on.
17 Candela, Goodman, and Lopez are conspiring. It can't be
18 proven. And it's not true -- it simply isn't true that
19 Octavius was in the loop, that he knew.

20 Now, regarding the crack cocaine. There's, also,
21 evidence in this case showing that Octavius didn't know
22 and, certainly, didn't possess. Actually, there's no
23 evidence that he possessed that crack cocaine. This is
24 the house of his mother and Charles Burns. They're the
25 legal owners. You've got the titles. There's no question

1 about that. We know who lived there. We know who did not
2 live there.

3 Octavius used to live there when he was younger. He
4 doesn't -- remember, he -- Octavius was only 25 when this
5 happened. He was a young man when this happened. He used
6 to live there. And he's still got some of his mail there.
7 I submit to you that is not unusual for a 25-year-old
8 male -- person, boy to continue to receive mail at his
9 mother's house. Even though he's not living there, I
10 submit to you, that is not unusual at all.

11 The papers don't prove anything. All these papers
12 and everything that -- some of them have his address on
13 them, and some of them don't. And some of them have a
14 P.O. box. And some of them are dated from the year 2001,
15 which is pretty irrelevant. I don't know that those prove
16 anything at all.

17 Ms. Ruthie Tate came to see us today. She showed us
18 the rent receipts. You've got those, too. Octavius has
19 been living in Mauldin since 2002 through 2006. He,
20 originally, signed the lease back in 2002. It was later
21 renewed. You've got all the receipts for all those years
22 showing that he lived in Mauldin at this apartment.
23 Received from Octavius Nelson, received from Octavius
24 Nelson. His name is all over it. I don't think there's
25 any question as to where he lived.

1 Now, he did have some contact with Dorchester.
2 There's no question about that. He came by a couple times
3 a week, whatever, to help with Bobby, his brother, who's
4 an invalid.

5 But there's no proof that Octavius had dominion and
6 control over that house. He's not the boss of that house.
7 That's not his house. He doesn't pay the bills at that
8 house. He had a key. But he didn't have his own room
9 there. He didn't keep many belongings there. He does not
10 have authority over that house. He does not have
11 dominion.

12 I think Judge Pyle will charge you about dominion and
13 control. He did not have dominion and control over that
14 house. Therefore, he did not have possession of the
15 drugs -- the crack that was found hidden in the kitchen
16 cabinet.

17 There's, also, no evidence that Octavius was present
18 when the crack was present. It could be that it was just
19 in the kitchen cabinet and he didn't know about it. There
20 were some firearms found that were talked about earlier.
21 There was no evidence linking those to him, no
22 fingerprints, or anything like that.

23 I'm not going to try to beguile you into thinking
24 that there wasn't something going on at that house over
25 there. Something was going on. I can't tell you what it

1 is. I don't believe that Ms. Monts knows what was going
2 on at that house either. Something was going on.
3 Somebody was doing something illegal at that house. I'm
4 not going to try to mislead you on that. But there's no
5 proof that Octavius was involved. There's, certainly, no
6 proof that he was knowingly involved.

7 The fingerprints, remember that? The fingerprints
8 were done on the crack, the crack that was found hidden in
9 the kitchen. That was the fingerprint analysis.
10 Octavius' prints were not on there. Mr. Goodman's weren't
11 either, I admit that. Octavius' prints weren't on there.
12 Octavius -- there's no proof that Octavius himself ever
13 actually or constructively possessed the crack or powder.

14 I respectfully request you to return a verdict of not
15 guilty on both counts. And I really want to thank you for
16 your time and attention.

17 THE COURT: All right. Mr. Scalzo.

18 MR. SCALZO: Good afternoon. I was going to say good
19 morning, but we're five minutes into the afternoon.

20 My wife and I have two friends who were born in
21 Japan. And we had dinner with them last week. And we
22 were talking. And the wife told me a story about when she
23 first came to America. She went to a grocery store. And
24 she was checking out. And the person said, Paper or
25 plastic. She said, What? Paper or plastic? She kept

1 saying, What, what? Paper or plastic? What happened
2 was -- what was lost in the context, because she's from a
3 different country at that point is, in America, a lot of
4 times, we cut off. So we do a lot of shorthand. He was
5 really asking her, Do you want paper or plastic bags? But
6 because he just said, Paper or plastic, she didn't know.
7 And she needed clarification on what he was asking her.

8 Now, I think that's applicable to what's been going
9 on. I've been trying to ask those kinds of questions
10 throughout the trial. We had the situation with Deputy
11 Maxwell, when he was talking about getting this Waiver of
12 Rights form from my client, Mr. Lopez. And we talked
13 about the time difference, you know, how could it be that
14 the time he signed it was so different than the time that
15 he started it? There was this discrepancy.

16 And Deputy Maxwell gave a reasonable explanation when
17 I posed the direct question to him. Well, it probably
18 should have been 1804, instead of 1604. Okay. But unless
19 I pose the question to him, that's left there to just sit
20 going what did he mean? Did he write it inadvertently,
21 1604? Was the other number wrong? You don't know the
22 answer, unless you ask the question directly, though.

23 Well, another example is Deputy Hines. He made a big
24 deal and used the word "obviously" several times
25 throughout his testimony that Mr. Lopez was lying to him

1 about certain things. And what he never did is he never
2 asked him a direct question to clarify whether it was a
3 lie, or whether he was misunderstanding. Are you going to
4 North Carolina from -- are you going to Georgia from North
5 Carolina? Are you simply making a stop? What exactly are
6 you doing? Is that your final destination? If you
7 thought he was lying, why not ask the next question? And
8 those are two small examples of a lot of what has been
9 going on in the case.

10 It just occurred to me sitting there listening to
11 Mr. Mackenzie that I don't know if you realize this, but
12 January 21st, 2005, is, literally, the only day this case
13 was investigated. Think about that from the State's
14 standpoint. We don't know -- other than, I guess, the
15 analysis of the evidence that was collected on the 21st,
16 has the State brought you anything that they've done since
17 that day to develop more evidence to further explain
18 what's going on in the case? No.

19 There's a problem -- or potentially a problem in
20 doing what we would normally do in everyday life in acting
21 as jurors and kind of doing the same thing. Assumptions
22 can be okay sometimes. They're not -- they don't cause
23 too many problems. They could. But lot of times they
24 don't in everyday life. Assuming somebody understands
25 English in saying paper or plastic is not going to cause

1 that big of a problem. You would be able to correct that
2 one. Criminal cases are not like that.

3 Your job as jurors, while it is to do justice, is
4 within a certain parameter. You have a role here. Your
5 role is to make sure that the State is doing its job, that
6 the State is bringing evidence that sufficiently proves
7 beyond a reasonable doubt what it alleges. That's why the
8 rule is the Defendant doesn't have to present any
9 evidence.

10 In this case, you have one Defendant who presented
11 evidence, and one Defendant who could not and did not.
12 But there's no burden on the Defendant. It's a very
13 important principle. You don't have that in everyday
14 life. You might not have that scenario when you were
15 trying to figure something out. But it's very important
16 because you're a check on the State. That's your role.

17 So while you're going to be charged to do justice,
18 you're not charged to do justice outside of your role as a
19 check on the State. And the way the State brings criminal
20 cases is they go out and they investigate. And whatever
21 evidence they bring, it needs to support their theory
22 beyond a reasonable doubt. So that gets us into the very
23 unique scenario that you find yourselves in now.

24 So there aren't any assumptions. They can't -- it's
25 not a situation where you're going to say it is proof

1 beyond a reasonable doubt, but I'm not sure about this
2 very important part of it. You can't assume the parts of
3 it. You have to be -- I think the language the Judge will
4 use is firmly convinced, certain. It's not mathematical
5 certainty. It's not, you know, scientific in the sense
6 that you have to have a scientist come in here and prove
7 to you all the elements scientifically down to the .01
8 degree. But it's not an assumption. It's a certainty.

9 You've got to feel secure and firm about each element
10 or part of what the State has to prove to you. That's
11 their job. And what -- so it's very easy and we don't
12 think about it to fall back into what we would do outside
13 of this courtroom. But inside the courtroom, it's a much
14 more difficult position that you find yourselves in.

15 Now, throughout the discussions with Mr. Lopez -- and
16 you'll have the statement that he gave to Mr. Maxwell and
17 Mr. Blackburn, who didn't testify, with you. And I think
18 it's important, one, it was not recorded either with an
19 audio recording device or a video recording device. It
20 could have been. It was not. It is not even written by
21 Mr. Lopez. It's not in his handwriting. It's not typed
22 by him. It's a telephone game for lack of a better way of
23 saying it. I tell you, you process it through your mind,
24 and you write it out.

25 Now, I understand what they're going to say is, well,

1 you know, he had a chance to look at it, and he could
2 correct it, and all that. Well, we all know that a lot of
3 times you just read something and you get -- basically, it
4 gets the gist of what it was. Think about it, he's
5 nervous. He's not going to sit there probably and look at
6 every word.

7 What's lost is the context of the conversation.
8 What's lost is, what did the officer say? Do you really
9 think that Mr. Lopez sat on one side, the two officers sat
10 on the other, and they said, Go. And Mr. Lopez said,
11 blah, blah, blah. They typed, and that was it. No.
12 There was a conversation going on. There was a back and
13 forth.

14 Mr. Grounsell doesn't spend his time and all of his
15 training of other people to just say, sit down, and say,
16 duh, and they write down what the guy says. There's a
17 conversation going on. And in that conversation, I think
18 it's important to look at the first paragraph and at the
19 second paragraph in the statement. I realize there are
20 three main paragraphs. But I'm really talking about the
21 first -- well, I guess it would be the second and third
22 paragraph on the applicable form.

23 The language changes. I promise you I'll let the --
24 have it in a minute. The language changes. It goes from
25 talking about the box. And then the officer starts --

1 shifts and talks about crack -- I mean cocaine. And if
2 you didn't look at it, it would be subtle -- and we all
3 know what's kind of gone on here. And in shorthand, paper
4 or plastic, we start saying box equals cocaine. Because
5 we get so comfortable with the story that it's become just
6 shorthand; right? Not in a jury trial in a criminal case.

7 Mr. Mackenzie started talking about something that I
8 was interested in talking to you about, knowing -- the
9 language is going to be knowingly. The Judge is going to
10 read you -- tell you the law, the statute. Mr. Lopez is
11 charged with trafficking in cocaine. He's not charged
12 with possession. He's charged with possession, plus.
13 It's got to be more than just being in possession. He's
14 got to be in possession of something that weighs more than
15 10 grams. And in this case, it's going to be 400 grams or
16 more. And pay attention to what he reads to you -- or
17 tells you.

18 There are three places in this statute where the word
19 knowingly is used, three. And they've got to prove he
20 knew what he was doing. Part of knowing what he was doing
21 is proving that he knew what he was getting himself into.
22 Was he getting himself into bringing a box that had -- and
23 this is not the same thing, but it's a similar size --
24 that much cocaine, or that much cocaine. What did he
25 know? And we could have had a real simple answer to that.

1 Mr. Candela. They had his address and his phone number.
2 There isn't any evidence of him past the 21st of January,
3 2005.

4 Mr. Lopez is sitting there. He, clearly, was
5 cooperating with them. He spilled his guts and told
6 them -- was telling them what was going on. He's
7 clearly -- and I want to make sure we don't lose this
8 point. He's entirely unsophisticated at what he had
9 himself involved in. He was nervous beyond belief that a
10 police officer pulls him over for speeding. He nervously
11 gets himself stopped, prolonged. I mean, he just keeps
12 walking into it more and more and more. Calm, cool, and
13 collected never entered Mr. Lopez's conduct in this case.
14 He, clearly, is not the level of a drug dealer,
15 trafficker, whatever you want to call it, to move the
16 weight of drugs we're talking about, the amount of money
17 we're talking about.

18 Now, he knows something is up. There's some evidence
19 that he knows something is up. He does say he went there
20 and saw the guy had a couple of kilo's. But that's not
21 the end of the inquiry. Again, that becomes -- you're
22 getting into guessing, you're getting into assumptions.

23 The question is, in the police's investigation, what
24 do they develop? Where do they go? And what do they then
25 bring into court to prove to you what he knew? Did he

1 know he was transferring a box that contained 500 grams of
2 cocaine? It would seem from his statement in that first
3 paragraph that he really was talking about a box that the
4 police would kind of interchange cocaine. But it was
5 never directly asked. And it was never directly
6 clarified. And I don't think that's by accident.

7 As a lawyer, I personally ask questions for a living.
8 I don't think that's an accident. If you ask a question,
9 you may not get the right answer, unless you know the
10 answer.

11 So you've got to be careful. If they ask him, did
12 you know what you were transporting? And he says, I don't
13 know what I'm transporting. I may have thought it was a
14 gram of cocaine, or I may have thought -- they don't know
15 what he's going to say. It's so much better to leave it
16 kind of vague and just say, we'll, ultimately, find out
17 how much it weighs, and then that's it. He knew what was
18 in there. I don't know.

19 Let's look at the evidence to suggest whether he knew
20 what was in there or not. Knowingly. Remember, he's got
21 to know it. If it's in that box in plastic and it's
22 contained -- I guess dipped or something in some detergent
23 is what was described. And I guess that was an effort to
24 disguise the odor that might come out of it.

25 Well, one, none of Mr. Lopez's fingerprints are on

1 anything that have been presented, certainly, not the box
2 and the drugs. Clearly, that was a fairly sophisticated
3 way of putting together this package that was to be
4 transported.

5 Another thing, think about his unsophistication in
6 the overall scheme of things. Would it really have made
7 sense for this Candela guy, who he had his phone number
8 and address for, to say, here, take this box, go bring it
9 to this guy. And then he's going to package the box
10 himself. He's going to make sure that all of this gets
11 inside here. He's going to make sure it's more -- you
12 don't want to ask too many questions in those situations.
13 You don't want -- he doesn't want to probably give a whole
14 lot of information. He probably would rather not know a
15 lot.

16 So the question being what he knew was in there is
17 pretty important when you're investigating a trafficking
18 in cocaine case, which is possession, plus, proving the
19 amount. And the first question you don't ask is how much
20 have you got? The police didn't -- apparently, didn't ask
21 him that. They talked about it as if it was a foregone
22 conclusion, but they didn't prove it. Why?

23 Well, go back to the testimony. And it's perfectly
24 understandable maybe, perhaps, at that moment, but they
25 were rushed. They kept saying, well, you know, we don't

1 want to lose the guy who might buy it. We don't want to
2 lose -- we don't want Candela to get all panicky. It's
3 perfectly reasonable things to do. And there isn't a
4 question in my mind that that was the right thing to do at
5 that moment.

6 But this is done before they ever talk to -- they
7 take the statement from Mr. Lopez. Remember the timing of
8 everything. Grounsell is in there for the statement just
9 before he gets pulled out. It's over with. The time --
10 the expediency, the need to have it done real quick is
11 gone at the point in which they're talking to Mr. Lopez.
12 And it's important. That's part of the evidence of what
13 they've got to do, prove that he knew. Prove the -- to
14 prove conspiracy isn't just, hey, buddy, can you take this
15 package over to that guy? You've got to know what's going
16 on.

17 And the mailman example, I guess, is a pretty good
18 one. He's not in a conspiracy with the person sending the
19 drugs, because he wasn't let in on what was, actually, in
20 there. We don't catch people by accident in a criminal
21 case. Accident is not part of the language you get in
22 criminal -- it's not part of the law that is required.
23 They've got to prove what he knew. And, for four years,
24 there's isn't any other evidence to prove that he knew it.

25 Now, if you were just talking about a possession and

1 it didn't require these other elements to it, that might
2 be a different story. But the elements of the parts that
3 make up a trafficking charge, which the Judge is going to
4 tell you, are possession of the drugs. Some of these
5 other things that might follow, the aiding, the abetting,
6 the conspiracy side of things. Weight is relevant in
7 trafficking, 10 grams or more. In this case, he's charged
8 with 400 grams or more. Those are pieces of what make up
9 the criminal offense.

10 What might start making you nervous is does the State
11 get to come in and just say, well, you know, it all works.
12 It all comes out in the wash. He had this amount. We
13 later measured it to be this weight, sort of just kind of
14 a processing along, you know, just keep going. Don't ask
15 too many questions because you might get bad answers.

16 Well, we'll stop it. Because that's what a trial is
17 about. That's why we ask those questions. We've got to
18 get the answers. And they may have been rushed early on,
19 but they, certainly, had the luxury of time to figure out
20 the answer to some of these questions.

21 Because think of the allegation. The allegation is
22 more than you just had it in your hand. The allegation is
23 a complex piece of a big puzzle. I'll contrast that with
24 the gun. Why? Because he was clear about the gun. Not
25 only was it his car -- they asked him. He told them on

1 the side of the road, I have a gun in the console. The
2 question of whether it would be obvious that the serial
3 number was scratched off, that's obvious. The serial
4 number is scratched off. That's a whole entirely -- it's
5 not packaged. It's not hidden from him. He didn't say he
6 got that from Candela. That's easy. I mean, he's guilty
7 of that.

8 And there are parts to that. The parts that make up
9 that offense that the State has to prove beyond a
10 reasonable doubt are that it was a handgun. Okay. Well,
11 there's a handgun. You had an expert come in here and say
12 that's a gun. Was it stolen or obliterated? Well, there
13 isn't any evidence that it's stolen. But the serial
14 numbers are obliterated. They're trying to hide it.
15 They've proven that beyond a reasonable doubt.

16 Was he selling it? No. Buying it? No. But he
17 possessed it. It was in his car. He acknowledged it was
18 his. Done. We close that up. They've proven that beyond
19 a reasonable doubt. But have they proven the other parts
20 of their second offense.

21 And my encouragement to you is to pay attention to
22 what the Judge tells you the law is. If you can, figure
23 out the parts. Sometimes, that's hard. But the parts are
24 you have to have possession of something. There are these
25 other elements, aiding, abetting, conspiracy, other ways

1 that you can further something to be trafficking, as
2 opposed to just having it.

3 And then you have the 400 grams, the weight of it,
4 which I thought was interesting when I asked the question
5 about how he weighs it. They just kind of take a little
6 part out. It's kind of a strange way to test it. But,
7 nonetheless, an element you have to figure out is what --
8 you know, how much it weighed.

9 And did he know? Knowing something and being certain
10 about what you're about to do is the key point and the key
11 difference between a criminal case and just anything else.
12 You've got to know what you're doing. We're not here
13 interested in punishing people for mistakenly doing
14 something, or planning to do something that they don't
15 realize they're doing like the mailman. That's a great
16 example.

17 Go through the elements. Go through the evidence,
18 and try to figure out what did he know he was getting
19 involved in. Because while there are several parts to the
20 offense, it is not the case where you can check box A and
21 B, and not check box C and D. In a criminal case, you've
22 got to check all of them. And they all have to meet the
23 same standard. Did you prove beyond a reasonable doubt?
24 Are you firmly convinced? Are you certain that it is what
25 the State is telling you it is?

1 So I would ask you to analyze it in the proper way,
2 in the very technical way that we ask you to do it as
3 jurors. And be conscious of the fact that it is not how
4 you view things in your everyday life. It's an increase.
5 It's a more in depth analysis than you do in your everyday
6 life.

7 Thank you.

8 THE COURT: Will you check and see if the jurors
9 lunch is here?

10 THE BAILIFF: It's here.

11 THE COURT: All right. We'll take a recess so the
12 jury can have their lunch. And then we'll pick back up
13 after lunch.

14 Take the jury out.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 12:22 p.m.)

17 THE COURT: We'll take a recess for lunch.

18 I neglected to tell jury not to discuss this case
19 during lunch.

20 Is there any objection to my bringing the Foreperson
21 in and just tell her not to...

22 MS. MONTS: Not from the State, Your Honor.

23 MR. SCALZO: No, sir.

24 MR. MACKENZIE: That's fine.

25 THE COURT: Bring the Forelady back in for me.

1 (WHEREUPON, Juror #277, Twana Walton, entered the
2 courtroom.)

3 THE COURT: Ms. Walton, I forgot to tell the jury,
4 during the lunch recess, don't talk about this case. You
5 don't do that until I've charged you and all the arguments
6 are complete.

7 So just talk about the weather, or something else.
8 Just don't --

9 JUROR #277, TWANA WALTON: We all understand.

10 THE COURT: Okay. Thank you.

11 (WHEREUPON, Juror #277, Twana Walton, exited the
12 courtroom.)

13 THE COURT: Please be ready to start back about
14 12:15.

15 MR. SCALZO: Do you mean 1:15?

16 THE COURT: I mean 1:15.

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: Bring the jury in, please.

19 (WHEREUPON, the jury came into open court at
20 approximately 1:22 p.m.)

21 THE COURT: All right. Solicitor, you may proceed.

22 CONTINUED CLOSING ARGUMENTS

23 MS. MONTS: Madam Forelady, ladies and gentlemen of
24 the jury, drug dealing is a business. It's a business
25 like any other business. There are roles. There are jobs

1 involved. Compare it to, say, a grocery store. There's
2 someone at the top, the owner, who's got money. There's
3 the manager. There's all the staff inside the store, the
4 deli manager, the meat cutter, the produce manager.
5 There's the bag boy, the cashier, the person that pushes
6 your groceries out to the store -- I mean out to your car.

7 And then it can go back even further. Because for
8 the stuff to get to the grocery store, you've got to have
9 a farmer. You've got to have a truck driver to get the
10 stuff to the store. You've got to have a gas line to get
11 to the truck to get the stuff to the store. It's an
12 entire business.

13 Drug dealing is the same way. There are different
14 jobs, different roles. And without every single role, the
15 drugs won't get from South America or wherever they came
16 from, processed, shipped, sent to certain cities, driven,
17 gotten to certain cities from the major source cities,
18 dealt out to individuals to change the cocaine into crack
19 when necessary. And then it's sent down the line to the
20 individual who stands on the street corner and sells a
21 rock of crack cocaine. It's the same thing, a business.
22 And without each of those roles, the business doesn't make
23 money. And businesses are meant to make money.

24 What do we know about this case? And let me explain
25 some of the charges to you. Because that is a -- very

1 confusing. This is a huge case. Each Defendant is
2 charged with two charges. Mr. Lopez, he is charged -- and
3 he is represented by Mr. Scalzo. He is charged -- and I'm
4 going to abbreviate -- with trafficking cocaine more than
5 400 grams. He is, also, charged with possession of a gun
6 with an obliterated serial number.

7 The cocaine that he's charged with, you heard the
8 information from the officers that stopped Mr. Lopez
9 coming off of I-85 at the White Horse Road exit. Inside
10 the cognac box in his trunk was found over 504 grams of
11 cocaine. How do you know it's really cocaine? Because
12 Mr. James Armstrong, who was qualified as an expert in
13 chemical and drug analysis, testified to it. You will
14 have his lab report back with you. 504.48 grams. This
15 was on -- excuse me. It was in the cognac bag -- box in
16 Mr. Lopez's trunk.

17 What else do we know about Mr. Lopez? Once he was
18 stopped by the police, he agreed to cooperate with them.
19 What did he do? He was -- initially, had verbal
20 communication with officers. He gave them some
21 information. And then, later, they changed it to a
22 written form and got it down in writing.

23 You've got the Waiver of Rights form where
24 Mr. Lopez -- and you'll have these all back with you to
25 look at during your deliberation once His Honor gives you

1 that opportunity. There's the Waiver of Rights form
2 saying he understands his rights, and his statement giving
3 details about what he was doing, that he's bringing 504
4 grams, half a kilogram, to Greenville. That's his role.
5 Mr. Lopez's role is to bring it from Atlanta to
6 Greenville, to get the cash, and go back to Atlanta.

7 Now, the statute for trafficking has many different
8 roles. In fact, some of those are delivering or bringing
9 into the state of South Carolina an illegal substance, in
10 this case, cocaine. You can, also, provide financial
11 assistance or otherwise aid, abet, attempt, or conspire to
12 sell, manufacture, deliver, or bring into the state or
13 knowingly being in actual or constructive possession, all
14 the roles in this business. Any role you have in this
15 drug dealing business, you are guilty of trafficking in
16 that illegal substance.

17 So if you find Mr. Lopez was in possession of this,
18 if you find that he brought it into the state, if you
19 found that he aided, abetted, conspired with anybody else
20 to bring this here, he is guilty of trafficking in
21 cocaine. And you know the weight is over 400 grams,
22 because of the lab report from Mr. Armstrong.

23 What's the other charge? Possession of a weapon with
24 an obliterated serial number. And you'll have the gun
25 that was in the center console of Mr. Lopez's car. And

1 James Armstrong is, also, an expert in ballistics. And he
2 testified that the -- he had to do some chemical stuff on
3 there, but that the serial number was obliterated or
4 scratched off.

5 And the officer, Mr. Hines, who stopped the Defendant
6 originally, Mr. Lopez, also, said when he saw the gun that
7 the serial number was obliterated or scratched off. So
8 the Defendant is -- Mr. Lopez is guilty of both of those.

9 You've got the statement. You've got the officer's
10 testimony from the car stop. And you've got your common
11 sense, background experiences, knowledge to use when
12 you're back there deliberating.

13 What's Mr. Nelson charged with? Mr. Nelson is
14 charged with two counts of trafficking. He is charged
15 with trafficking cocaine more than 400 grams, and
16 trafficking crack cocaine more than 28 grams. This 400
17 grams is the same -- excuse me, over 400 grams is the same
18 400 grams that Mr. Lopez is charged with. Why? Because
19 it takes more than one person to do a drug business. Many
20 people are involved. And many people who are involved
21 including this -- on the streets are guilty of trafficking.

22 Now, what is Mr. Nelson's role in the trafficking of
23 the 400 grams, and what is his role in trafficking crack?
24 The trafficking crack is the 39.18 grams that are the two
25 quarter cookies. You can -- you'll have this back in the

1 jury room when you're deliberating to look at. These are
2 the two quarter cookies that were found in the kitchen
3 cabinet at [REDACTED] You will have
4 the lab report back with you with that amount on it as
5 well.

6 And there are some other items here. There's an
7 amount of marijuana, an amount of methylene dioxy
8 methamphetamine, which is Ecstasy -- and I'll go over these
9 in a minute -- the crack cocaine, and then, also, the
10 cocaine that was found in the kitchen cupboard in the kilo
11 wrapper. And there was just some residue in there.

12 But the lab, through James Armstrong, tested the
13 kilogram wrapper. I believe Mr. -- Officer McBee
14 testified about the shape. It was in the shape of a
15 kilogram. And it still had some powder in it that was
16 enough to be tested. And it says, no weight, but it was
17 definitely cocaine.

18 Now, the trafficking crack, as I said, is the 28 --
19 39 grams in the house. The trafficking cocaine is the 400
20 grams from Mr. Lopez's car. Because Mr. Lopez was
21 bringing it to Greenville, and somebody is going to do
22 something with it here in Greenville.

23 Now, what do we know? And you can use your
24 backgrounds, experiences in education. But the -- you can
25 use circumstantial evidence or direct evidence.

1 Circumstantial evidence is when you derive your conclusion
2 from facts that are proven. It means it's not that
3 somebody said it or that you saw it, but facts that are
4 proven to you to lead you to your conclusion.

5 What do we know in this case? We know that
6 Mr. Nelson showed up at the Waffle House on I-85 and
7 Augusta Road at approximately 4:40 in the afternoon on
8 January 21st, 2005.

9 What else do we know? We know that Mr. Lopez said
10 the person I am to meet is going to be in a blue pickup
11 truck. The officers were there. They observed only one
12 pickup truck that matched that description. They didn't
13 go forward because they knew they needed more than just
14 that he was in a blue pickup truck. They needed the fact
15 that he made some sort of communication or attempt to
16 communicate with the person in that vehicle who, again,
17 remember, was not Mr. Lopez.

18 Now, Officer Grounsell, at the time, got into
19 Mr. Lopez's white Intrepid and went to the location spot.
20 Once he got there, he waved and motioned to Mr. Grounsell
21 to let him know to follow him. And the Defendant even
22 testified he was there. He was to meet someone. So
23 there's -- I believe there's no misunderstanding about
24 that.

25 But what a coincidence. The deal was set up. The

1 call from Lopez at the Sheriff's Office via his cell phone
2 to the phone number with the last two digits 68 was at
3 3:52. At that point, officers knew we are going to the
4 Waffle House, and we are looking for a blue pickup truck
5 at 3:52.

6 Apparently -- and this evidence is from the Defense.
7 But, apparently, per the Defense, Mr. James Goodman shows
8 up at Octavius' parents house where Octavius happens to be
9 sleeping in the bed in the living room at the time. And
10 Mr. Octavius Nelson gets up. And he's going to go to the
11 Waffle House. And Mr. Goodman says, Where are you going?

12 And he says, To the Waffle House.

13 He says, Oh, if you're going there, can you meet a
14 friend?

15 Ladies and gentlemen, what a huge coincidence. It is
16 not a coincidence, because that's not the way it happened.
17 Mr. Nelson is involved in this drug operation. There are
18 many roles in this drug operation. And his role -- and we
19 will go through the rest of this evidence to show you some
20 more evidence towards it. But his role is involved in his
21 relationship, as he said it, to Mr. Goodman.

22 The fact that many of these drug items were found in
23 the house at [REDACTED] where he had access to,
24 where he had a bed in the living room that he slept in
25 because the one bedroom was burned out, that he had an

1 invalid brother there that he would go and help out. So
2 he was there on a somewhat regular basis.

3 What else do we know about the relationship between
4 Mr. Goodman and Mr. Nelson? Mr. Nelson put a phone in his
5 name -- Mr. Nelson's name for the use of Mr. Goodman.
6 That is -- shows quite a close relationship. The --
7 you'll have the phone records back there, the bills for
8 these phones -- for both of the phones go to [REDACTED]
9 [REDACTED] in Greenville. They're both in
10 Mr. Nelson's name. But one is being used by Mr. Goodman,
11 the other is being used by Mr. Nelson. That shows a close
12 relationship.

13 What else do we know? That Mr. Nelson testified they
14 were friends. They hung out together. They played video
15 games together. They knew some of the same people.
16 Mr. Goodman came over to the house at [REDACTED]
17 and hung out with him.

18 What else do we know? The street value of 504 grams
19 of cocaine was the purchase price, \$10,500. Once you
20 split that over -- the five times over, as Grounsell
21 testified, this turns into over \$50,000.

22 Ladies and gentlemen, in order to be dealing with
23 \$50,000, which is more than most people make in, at least,
24 a year, or two, or three, you have to trust somebody.
25 Because you don't want to lose this. You lose this, the

1 people above you are not going to be happy. And you are
2 going to be in a bad situation.

3 What else do we know about the relationship between
4 Goodman and Nelson? Mr. Nelson trusted him so much that
5 he said he needed to give him the phone so that he could
6 call him to help -- that he could call him if his sick
7 brother needed help. That is quite the close person if
8 you feel comfortable enough to call them up and say,
9 please, go to my parents house and help out my sick
10 brother. That is a close friend. Someone you know a lot
11 about if you are going to trust them with somebody you
12 care about like that. Yes, he knows what type of person
13 Mr. Goodman is. He knows him. He's involved with him.
14 You're not going to be involved in a \$50,000 deal --
15 Mr. Goodman is not if he doesn't trust the person he is
16 sending to go pick this up.

17 What do we know about the direct-connect call? As
18 Officer Marchi testified, the direct-connect call, it's
19 not a regular phone call. It's direct to the phone. So
20 it's not going to be on the phone records. But he checked
21 the direct connect. And at 4:56, there was a
22 direct-connect call from the phone supposedly in the hands
23 of Mr. Goodman to the phone that was on the Defendant,
24 Mr. Nelson.

25 There was no answer. Because, at this point,

1 Mr. Nelson was under arrest. But why did that call come
2 through? Because Mr. Nelson had not met up with them,
3 with the person that had this much drugs. Do you think he
4 called him up to say, hey, how are your eggs from the
5 Waffle House? Why aren't you back yet? No, he called to
6 keep up with these drugs.

7 What else are you going to find out? The phone
8 records show from Atlanta to the second phone, the 68
9 number, calls. Why? As we said, there are separate roles
10 in the drug business. There's got to be somebody with the
11 connections. And that person in this case is whoever had
12 that second phone that -- from the Defense that second
13 person was Mr. Goodman. The State put forward no
14 evidence. We don't know who had that second phone. But
15 whoever had that second phone was the connection to the
16 drug dealer in Atlanta. And that phone was in the name of
17 Octavius Nelson.

18 What else do we know? That when Mr. Nelson -- excuse
19 me, Mr. Nelson was at the [REDACTED] address
20 sleeping that afternoon when his mother came home with the
21 baby. Remember, there was a baby here at the house. She
22 came home. Octavius -- Tay is asleep in that bed in the
23 living room.

24 What else do you know? What did Officer Maxwell find
25 under the cloth in the bed in the living room? A

1 revolver, loaded.

2 What else do we know? At the scene, there was no
3 money found on Mr. Nelson. But what else do we know?
4 You've got to think through the entire process. The deal
5 was not to be finished or completed at the Waffle House.
6 The deal was for somebody to bring Mr. Lopez to another
7 location to make the deal. Why? As Mr. Grounsell
8 testified, you're not going to do a drug deal for this
9 much money -- at this point, supposedly, \$10,500 -- in an
10 open area.

11 What else? Somebody could get robbed, either the
12 buyer or the seller. In this case, you could get robbed
13 of the drugs, or the other person could get robbed of the
14 money. So they go to a separate location to do that.

15 What other information do we have about Mr. Nelson?
16 The house, [REDACTED] we know that he has
17 access, that he's there a lot, that his brother was sick,
18 that he was there a lot for that, that he had a bed in the
19 living room that he slept in, that he had a key. He had
20 access at any time. That he would be there to watch video
21 games, hang out.

22 There was a note on the TV that you'll have back
23 there, Mom and Charles, I'm taping the fight on HBO, love,
24 Tay. I'm going to check on junior and senior showing that
25 he does have access and does go to that house. And why

1 does that matter? Because somebody had 39.18 grams of
2 crack cocaine. And somebody had all these other items
3 that I'm going to go into in that house, and knew they
4 were there.

5 What else do we know about these items? They were
6 spread out in four separate locations. It wasn't somebody
7 running in the door and stashing something, oh, my gosh,
8 someone is chasing me, I'm going to stash something. Four
9 separate locations. We've got the burnt-out bedroom,
10 there were a few items. The invalid brother's bedroom
11 that -- and as you heard the testimony, he could not move
12 around. And these items were high up on a shelf. In the
13 kitchen were many of these items. They were high -- as
14 McBee said, they were about shoulder length to him. He's
15 6'5". So high enough up that you have to be standing up
16 to get to those items. And the other location was in the
17 living room. Four separate locations.

18 What else do you know about these items? They are
19 items for cooking. What do you need to cook crack
20 cocaine? Cocaine, and you need additives, baking soda.
21 What do you need? Pyrex, forks. What do you need to
22 grind up the hard parts of the cocaine? You need a
23 grinder.

24 What else do you need to weigh it out into smaller
25 amounts? Scales. We have three scales in this case from

1 different locations in the house, digital scales, not
2 scales to mail -- to maybe weigh a letter or something.
3 This is where production is occurring. You've got the
4 kilo wrapper from the kitchen, along with the residue.
5 There had been cocaine here.

6 What do you know? I mean, this is cocaine, but it's
7 just not a weighable amount. You've got the crack cocaine
8 itself that has been cooked in that house.

9 What do you know about who's in that house?
10 Ms. Burns -- or Ms. Nelson, who testified, her husband,
11 the invalid brother, who was in the room -- bedroom right
12 off the kitchen, and a baby. Ms. Nelson said she doesn't
13 know anything about guns. She doesn't know anything about
14 drugs, never saw them. The invalid brother, obviously,
15 had no ability to run a drug business. The baby had no
16 ability to run a drug business, or be a part of the drug
17 business, not necessarily run it, but be a part of it, be
18 one of the spokes in the wheel.

19 But Mr. Octavius Nelson was able to do these things.
20 He did have access to the house. He did spend time in
21 this house. He did have access to these four different
22 locations. He was sleeping in the bed with the
23 revolver -- where the revolver was found just moments
24 after his arrest when they went to the house right after
25 his arrest at the Waffle House.

1 I want to point out what items were found in which
2 locations. And you will have these items in the back with
3 you to look over. There was some marijuana found in
4 the -- the green plant material, which was analyzed as
5 marijuana and it's on the lab report, was found in the
6 china hutch in the dining room area. What else was found
7 in there? As his mother testified -- as Mr. Nelson's
8 mother testified, I said, Didn't he leave some mail in
9 that location?

10 She said, Yes. He left mail in the china hutch.

11 What else was found in the china hutch?

12 Cartridges -- 9mm cartridges. And the dining room was off
13 of the living room. What else? The living room, a
14 handgun loaded in the living room on the bed under the
15 cover.

16 What about the closet in the bedroom of the invalid
17 brother? There were 32 methylene dioxy methamphetamine
18 pills, also known as Ectasy, in that closet high up. So
19 the invalid brother was not able to reach that. Also, in
20 that closet was the other pistol. The other pistol was in
21 that closet where the brother -- the invalid brother could
22 not reach it.

23 So there are two guns in this house. There's a baby
24 in this house. And, again, that -- this gun was, also,
25 loaded, if you remember the testimony of the officers, two

1 loaded guns in that house.

2 In the kitchen, you've got the kilo wrapper with the
3 residue. You've got the 39.18 grams that the chemist
4 analyzed as being crack cocaine, which is cooked cocaine
5 using the additives that were, also, found in the house,
6 the baking soda, and the scales, everything else that
7 would be needed to produce crack cocaine.

8 And in the burned out bedroom was found a Pyrex
9 measuring cup, the baking powder, a fork, and two of the
10 scales in that burned out room in the closet. Officer
11 Marchi had found those. So, again, four separate
12 locations, two guns, methamphetamine, crack, cocaine
13 residue, marijuana. And nobody knows how it got there.
14 Nobody knows how it got there. There are the parents.
15 There are the invalid brother. And there's Mr. Nelson.

16 And, again, talking about the roles. There are roles
17 in the drug business. What did Mr. Nelson do? He went to
18 pick up the drugs. Do you believe his story? That's up
19 to you. The 12 of you are back there deliberating to
20 decide whether you believe his story. But look at the
21 inconsistencies. Look at the entire picture. Look at the
22 circumstantial evidence. And add up the pieces together
23 to come up with your conclusions.

24 There was no money at the scene. As I said before,
25 the officers testified there wouldn't be money at the

1 scene. Number one, they were already -- it was already
2 known they were going to a separate location.

3 What do you know? Mr. Goodman was not at [REDACTED]
4 [REDACTED]. If he was there before -- again, there was no
5 evidence from the State that he was there. But if he was
6 there, he wasn't there when the police arrived shortly
7 after the arrest at the Waffle House to go try to get a
8 consent to search at that house.

9 Why? Because he tried to direct connect with
10 Octavius Nelson at 4:56. And there was no response. He
11 knew there was something wrong. So he did not stay at
12 that location. Or the second reason is he already was on
13 his way to the second location with the money to make the
14 exchange.

15 Ladies and gentlemen, Mr. Lopez is charged with
16 trafficking cocaine, and possession of a gun with an
17 obliterated serial number. Mr. Nelson is charged with
18 trafficking cocaine because he was the connection. He was
19 the person going to pick it up.

20 He knows Mr. Goodman, per him. Per his testimony, he
21 knows Mr. Goodman. He knows what kind of person he is.
22 He spends time with him. He knows what he does. This is
23 up to \$50,000 in value. It's not something you just say,
24 hey, if you're going to pick up some food, bring this guy
25 over. You're not going to trust someone with this much

1 dope with that much value without having them in your
2 trust and in your circle.

3 And, as you heard, there was trust there. Because,
4 supposedly, the cell phone was in his name and given to
5 Mr. Goodman so that he could come over and assist with the
6 invalid brother, if he needed it.

7 Ladies and gentlemen, you add up all the pieces in
8 this, all the pieces, the pieces from the cocaine coming
9 from Atlanta, the delivery at the Waffle House, all the
10 evidence of the cooking going on to make crack cocaine at
11 [REDACTED] You add in that Ms. Nelson
12 testified she had never seen a gun and never seen all
13 these things in four different places in the house.
14 There's two explanations for that. One, she really
15 didn't, or, number two, she put on blinders.

16 What do we know? The house is in foreclosure. They
17 have a son who needs medical attention. Either way, she
18 was not charged with this. The invalid brother was not
19 charged with this. Octavius -- or Tay Nelson was charged
20 with trafficking the crack cocaine.

21 If you have over 28 grams -- in this case, over 28
22 grams of crack cocaine, you either possess it, deliver it,
23 distribute it, or conspire, which means in agreement. A
24 conspiracy is an agreement with someone else to,
25 eventually, commit an illegal act, a conspiracy in any

1 manner what you're role is. And over 28 grams is
2 trafficking.

3 Also, possession is included. That can be actual in
4 your possession like in my pocket, or constructive that
5 it's at my home and I have the ability to go and control
6 it. Mr. Nelson did have the ability to go to that house
7 and control any of these items.

8 Ladies and gentlemen, look at the circumstantial
9 evidence. Look at the direct evidence. Look at the value
10 of the dope. \$50,000 was this -- was the cocaine that
11 hadn't been broken down yet. And as Investigator
12 Grounsell told you, this, at retail value, would be 1,500.
13 And the other way, it would be up to \$7,800. Because this
14 is cut down into crack rocks about .10 grams each. Many
15 crack rocks out of this and what appears to be a small
16 amount, 39.18 grams is over 28 grams.

17 Any role that this Defendant, Mr. Nelson, had
18 regarding this stuff, whether he went to pick it up,
19 whether he allowed the cooking to be going on in his
20 house, whether he assisted in any manner, providing the
21 home, providing a safe place where no one is going to
22 watch or say you can't do that here. He didn't have to
23 have the connections in Atlanta. He didn't have to have
24 the money.

25 Remember the grocery store. Any one of those people

1 who works in the store, brings the supplies there is
2 involved in the business. It's the same thing with the
3 drug business. Any person involved in that chain --

4 MR. SCALZO: I'm going to object, Your Honor. I
5 think it's an incorrect statement on the law --

6 THE COURT: She can argue any way she wants to. I'll
7 charge the law.

8 ... Wrap it up, please, Solicitor.

9 MS. MONTS: Ladies and gentlemen, I appreciate your
10 time and your attention. The Defendant had a role in this
11 drug business.

12 Thank you.

13 MR. SCALZO: Your Honor, I think she raised a new
14 issue with regard to trying to say that the grower in
15 Mexico to the street person --

16 THE COURT: Okay. I'll charge the law.

17 MR. SCALZO: Well, I would request that we make a
18 rebuttal on that --

19 THE COURT: No, sir.

20 No one in or out of the courtroom during my charge.
21 So if anyone needs to leave, now is the time to do so.

22 CHARGE ON THE LAW

23 THE COURT: Now, as you know, ladies and gentlemen,
24 both Defendants in this case are charged with trafficking
25 cocaine. Mr. Nelson, in addition, is indicted for

1 trafficking crack cocaine. And Mr. Lopez is indicted for
2 , possessing a firearm with an obliterated serial number.

3 First, now, with respect to trafficking these illegal
4 substances, I charge you that our statute pertaining to
5 illegal drugs provides in part as follows: A person who
6 knowingly sells, manufactures, cultivates, delivers,
7 purchases, or brings into this state, or who provides
8 financial assistance or otherwise aids, abets, attempts,
9 or conspires to sell, manufacture, cultivate, deliver,
10 purchase, or bring into this state, or who is knowingly in
11 actual or constructive possession, or who knowingly
12 attempts to become in actual or constructive possession of
13 400 grams or more of cocaine and/or 28 grams or more of
14 crack cocaine is known as trafficking in cocaine and crack
15 cocaine.

16 Now, ladies and gentlemen, it is the amount of these
17 illegal drugs which constitutes the criminal act that
18 triggers the trafficking statute. Now, this distinguishes
19 trafficking as distinguished from mere simple possession
20 or with possession with intent to distribute. So it is
21 the amount of possession that triggers this statute. Now,
22 if the amount of these illegal drugs is 400 grams or more
23 with respect to cocaine, or 28 grams with respect to crack
24 cocaine, then the trafficking statute I read to you is
25 applied.

1 So what are the elements of this offense which the
2 State must prove to your satisfaction beyond a reasonable
3 doubt? First of all, the State must prove that the
4 substances in question are cocaine and crack cocaine.
5 And, secondly, the State must prove that these Defendants
6 knowingly possessed these illegal substances. Now,
7 knowingly means with knowledge. That is something
8 consciously done.

9 And, third, the State must prove that 28 grams or
10 more of crack cocaine and 400 grams or more of cocaine was
11 possessed by the respective Defendants. And by that, I
12 mean that Mr. Nelson would have to be in possession of 400
13 grams or more of cocaine and more than 28 grams of crack
14 cocaine. With respect to Mr. Lopez, 400 grams of cocaine.

15 Now, under the statute I read to you, ladies and
16 gentlemen, possession may be actual or it may be
17 constructive. A person has possession of a substance
18 within the meaning of our law when he has both the power
19 and the intent to control its disposition or its use.

20 Now, where a substance is found on the property, or
21 the premises, or the place under the control of a person,
22 this fact in and of itself gives rise to an inference of
23 knowledge and possession on the part of that person.
24 Therefore, possession of a substance may be inferred from
25 the circumstances. And the substance is deemed to be in

1 the constructive possession of a person controlling the
2 property, the premises, or the place where it is located.
3 Possession of drugs may be imputed to anyone who has the
4 power and the intent to control the disposition or use of
5 that drug.

6 Now, this inference is one of fact and not of law.
7 It is evidentiary in nature and is not conclusive and
8 should, therefore, be taken into consideration by you, the
9 jury, along with all the other evidence in the case, and
10 is to be given such weight as you determine it should
11 receive.

12 Now, ladies and gentlemen, as I said, actual
13 possession of a substance occurs when the substance is
14 found to be in the actual physical possession of a person
15 charged. Constructive possession, on the other hand,
16 occurs when the person charged with possession has
17 dominion and control over the substance itself or the
18 property, the place, or the premises upon which it was
19 found, or where he was a joint participant in the
20 committing of the offense.

21 Now, I charge you, ladies and gentlemen, that proof
22 of possession requires more than proof of mere presence at
23 the scene of a crime. Again, the State must prove that
24 these Defendants had dominion and control over the
25 substances allegedly possessed, or that they had the right

1 to exercise dominion and control over them.

2 Now, also, in determining whether or not a substance
3 is possessed, you may consider the amount of the substance
4 alleged to have been possessed, the manner in which it was
5 allegedly possessed, the place where it was allegedly
6 possessed, and any other factor which you consider to be
7 important provided, of course, that the factor is
8 supported by evidence.

9 Now, Mr. Lopez is indicted, as I told you, with
10 possessing a pistol on which the serial number had been
11 obliterated. This is a statutory offense. And Section
12 16-23-30 of our Code of Laws provides in part as follows:
13 A person shall not knowingly possess a handgun from which
14 the original serial number has been removed or
15 obliterated. Now, again, I tell you that the word
16 knowingly means with knowledge, that is something
17 consciously done.

18 So with respect to this charge, what the State must
19 prove beyond a reasonable doubt is that Mr. Lopez
20 possessed this pistol and that it had its serial number
21 removed or obliterated. Ladies and gentlemen, I charge
22 you that if two or more people in pursuance of a common
23 design to commit an unlawful act set out together and each
24 takes a part agreed upon or assigned to him if the
25 unlawful act is committed, then the act of one is the act

1 of all, and all would be guilty.

2 In other words, if two or more people agree or
3 conspire to commit a crime, each of those persons is
4 criminally responsible for the acts or act of his
5 confederates which are done in furtherance of the common
6 purpose for which they combined. In other words, all who
7 are present either actually or constructively and
8 participating in the unlawful common design, all would be
9 guilty.

10 Ladies and gentlemen, in the trial of a case, the
11 State may rely on direct evidence, on circumstantial
12 evidence, or on a combination of the two. Direct evidence
13 proves the existence of a disputed fact by using one or
14 more of our five senses without the aid of any inference.
15 For example, the testimony of a person who asserts or
16 claims to have actual knowledge of a fact, in other words,
17 an eyewitness. That is direct evidence.

18 Circumstantial evidence, on the other hand, is where
19 certain facts known through using one or more of our five
20 senses produces a logical inference that other facts exist
21 without directly proving those facts. Circumstantial
22 evidence is the proof of a chain of facts and
23 circumstances indicating the existence of a fact.

24 Now, as I have said, the State may rely on either or
25 both of this type evidence, direct or circumstantial. And

1 either -- neither is inferior to the other. The one is
2 equally as good as the other if equally convincing to you,
3 the jury. Each is entitled to the same weight. Now, you
4 should weigh all of the evidence in this case. And after
5 doing so, if you're not convinced of these Defendants
6 guilt beyond a reasonable doubt, then you must find them
7 not guilty.

8 Ladies and gentlemen, I charge you that no statement
9 may be considered by a jury, unless it finds beyond a
10 reasonable doubt that the statement under the totality of
11 the circumstances was freely and voluntarily given. And
12 if given while the Defendant was in custody, it was given
13 after an explanation of his Miranda rights, which must
14 have been understood by him. In other words, I charge you
15 that a statement of a defendant cannot be considered
16 against him unless he was first advised of his right to
17 counsel, of his right to remain silent, and of the fact
18 that any statement could be used against him, all of which
19 must have been understood by him.

20 A statement cannot be considered against a defendant
21 if it was made through force, or fear, or under duress, or
22 compulsion of any kind, or if it was induced by any
23 promise of leniency or reward of any kind.

24 Now, the statement admitted into evidence in this
25 case must be disregarded by you and not considered against

1 Defendant Lopez, unless the State has satisfied you from
2 the testimony beyond a reasonable doubt that it was,
3 actually, made by him. And even if you find it was made
4 by him, it still must be disregarded by you and not
5 considered against him, unless the State has, also,
6 satisfied you from the evidence that it was not extorted
7 by force or fear, or induced by promise. And, of course,
8 in order to constitute any evidence, the statement must be
9 believed by you, the jury.

10 Now, ladies and gentlemen, I am the judge of the law
11 in this case. You are the judges of the facts. The
12 Constitution of our state does not allow me to charge you
13 on the facts of this case, or to discuss the facts with
14 you, or in any way or manner let you know what my personal
15 feelings, if any, are about this case. That is because
16 you and you alone are the judges of the facts. Therefore,
17 if during the course of this trial or if during the course
18 of my charge, you have a feeling or you have been left
19 with the impression that I have a personal feeling about
20 this case one way or another, then you disregard that
21 feeling or that impression.

22 Now, it is your duty and your duty alone to weigh the
23 testimony and evidence presented in this case and to pass
24 upon the credibility or the believability of the witnesses
25 you heard testify. In this connection, you have the right

1 to believe all that a witness told you, or you can
2 disbelieve all a witness told you. You can believe a part
3 of what a witness told you, and disbelieve a part of what
4 a witness told you. You can believe one witness as
5 against several, or you can believe several as against
6 one. You, also, have the right to take into consideration
7 any bias, or prejudice, or interest you feel a witness in
8 the case might have.

9 Now, with respect to witnesses. Our rules of
10 evidence ordinarily do not permit them to testify as to
11 opinions or conclusions. Now, an exception to this rule
12 exists as to those whom we call expert witnesses.
13 Witnesses who by education and/or experience have become
14 an expert in some art, science, profession, or calling may
15 state an opinion as to relevant and material matter in
16 which they profess to be an expert. And they, also, may
17 give their reasons for their opinions.

18 Now, you should consider any expert opinion received
19 into evidence in this case and give it such weight as you
20 think it deserves. If you should decide that the opinion
21 of an expert witness is not based upon sufficient
22 education and/or experience, or if you should conclude
23 that the reasons given in support of that opinion are not
24 sound, or that the opinion is outweighed by other
25 evidence, you may disregard the opinion in its entirety.

1 An expert's testimony is to be given no greater
2 weight than that of other witnesses simply because that
3 person has been declared to be an expert. You're not
4 required to accept a purported expert's opinion, even
5 though it may be uncontradicting.

6 Now, as I told you earlier, it is my duty to charge
7 the law which is applicable to the facts in this case.
8 It's not a question of what you feel the law might be or
9 what it should be. It is not necessarily what the
10 attorneys may have told you it is. Because, under your
11 oath, you are required to take the law as I give it to
12 you, apply that law to the facts as you determine those
13 facts to be, and to write your verdict accordingly.

14 It is, also, my duty to see that this trial is
15 conducted according to the rules of court and the rules of
16 evidence applicable to the admissibility of testimony and
17 evidence as I understand those rules to be. And,
18 therefore, you are not to consider in any way or manner
19 testimony or evidence that was ruled out by me as being
20 not admissible.

21 Now, in this case, as in all criminal cases, these
22 Defendants come into this courtroom presumed to be
23 innocent. And this presumption continues and carries
24 through the entire trial until and unless it is removed by
25 evidence that satisfies you of their guilt beyond a

1 reasonable doubt. The burden is on the State in this case
2 to prove these Defendants guilty, and to prove each and
3 every element of the offenses with which -- of which
4 they've been charged beyond a reasonable doubt.

5 Now, some of you may have in the past served on civil
6 cases. And, if so, you were most likely told that it was
7 only necessary to prove that a fact was more likely true
8 than not true. But, in criminal cases, the State's proof
9 must be more powerful. As I told you, it must be beyond a
10 reasonable doubt.

11 Now, proof beyond a reasonable doubt is proof that
12 leaves you firmly convinced of these Defendants guilt.
13 There are very few things in this world that we know with
14 absolute certainty. And, in criminal cases, our law does
15 not require proof that overcomes every possible doubt.

16 If, based on your consideration of the evidence in
17 this case, you are firmly convinced that these Defendants
18 are guilty, then you must find them guilty. If, on the
19 other hand, you think there is a real possibility that
20 they're not guilty, then you must give them the benefit of
21 that doubt and find them not guilty.

22 Now, ladies and gentlemen, our law does not compel a
23 defendant in a criminal case to take the witness stand and
24 testify. And no presumption of guilt may be raised, and
25 no inference of any kind may be drawn from the Defendant

1 Lopez's decision not to participate in his case and
2 testify or, otherwise, present evidence.

3 Our law never imposes upon a defendant in a criminal
4 case the burden or duty of calling any witnesses, or
5 producing any evidence, or of testifying. Therefore, the
6 decision of this Defendant not to participate in his trial
7 should not be taken, held, discussed, or considered
8 against him in any manner whatsoever.

9 Under the oath you took in this case, ladies and
10 gentlemen, you swore to try this case based only and
11 solely on the testimony and evidence presented in this
12 case. I tell you that it is your duty to lay aside all
13 outside opinions, bias, prejudice, or sympathy you may
14 have in reaching your verdict. The word verdict is taken
15 from the Latin word "veredicto." It means to speak the
16 truth. Ladies and gentlemen, you have no friends to
17 reward in this case or enemies to punish. I charge you to
18 abide by your oath and return verdicts that speak the
19 truth.

20 Now, you'll have in the jury room with you the
21 indictments in these cases. These indictments do not
22 constitute evidence. They simply set forth the
23 allegations by the State. These indictments are the legal
24 documents by which the case is brought into this courtroom
25 and presented to you for your determination.

1 Now, with respect to each indictment, there are one
2 of two possible verdicts, guilty or not guilty. And
3 whatever that verdict is, ladies and gentlemen, it must be
4 unanimous, that is all 12 of you must agree.

5 Madam Foreperson, whatever the unanimous verdict of
6 the jury is on each indictment, you'll find a place on the
7 back of the indictment which says "Verdict." Write out
8 that unanimous verdict, and then sign your name on the
9 line where it says, "Foreperson of the petit jury."

10 All right. At this time, I'm required go over my
11 charge with the lawyers. I need you to go back into your
12 jury room. But don't begin deliberating until I send word
13 in for you to do so.

14 Thank you.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 2:15 p.m.)

17 THE COURT: Anything further from the State?

18 MS. MONTS: Yes, Your Honor.

19 We believe that the charge should include as far as
20 the trafficking cocaine and trafficking crack the other
21 ways to prove trafficking besides possession to include
22 the selling, manufacturing, delivering, or bringing into
23 the State, knowingly providing financial assistance or
24 otherwise aiding, abetting, attempting, or conspiring.

25 THE COURT: I charged that.

1 (WHEREUPON, the jury came into open court at
2 approximately 2:10 p.m.)

3 THE COURT: Madam Forelady, if you've reached a
4 verdict, would you hand it to the bailiff, please, ma'am.

5 Okay. Please publish the verdicts.

6 VERDICT

7 THE CLERK: Your Honor, in the case of
8 2005-GS-23-1957, the State v. Daniel Jesus Lopez, who is
9 indicted for trafficking cocaine, the verdict is guilty.
10 In the case of 2005-GS-23-1956, the State v. Daniel Jesus
11 Lopez, indicted for possession of a firearm with an
12 obliterated serial number, the verdict is guilty.

13 In the case of 2005-GS-23-1953, the State v. Octavius
14 Louis Nelson, indicted for trafficking cocaine, the
15 verdict is not guilty.

16 These are all signed by our Forelady.

17 Ladies and gentlemen of the jury, if you agree these
18 are the verdicts you reached in your deliberation room,
19 would you, please, raise your right hand.

20 (WHEREUPON, all jurors raised their hand.)

21 THE CLERK: Thank you.

22 THE COURT: Anything further from the jury, Counsel?

23 MS. MONTS: No, Your Honor.

24 MR. MACKENZIE: No, sir, Your Honor.

25 THE COURT: Thank you, ladies and gentlemen, for your

1 service on this case. And thank you for your service this
2 week.

3 And so far as you're concerned, you're through. You
4 don't have to come back tomorrow.

5 I want to take this opportunity to thank you for
6 coming and serving. We know it's difficult for you to
7 take off time from your jobs and families and serve it
8 with us on jury duty. But I do hope you understand the
9 importance of being here this week. For without your
10 presence, we could not get off from our docket the cases
11 that we do. It is a very important service you have
12 performed. And I thank you for that service.

13 Now, if you'll report downstairs to the jury assembly
14 room, Judy will have a voucher to give to you for your
15 service this week. And attached to that voucher will be a
16 slip for you to give to your employer, should you need
17 that. I've enjoyed working with you.

18 Thank you so much.

19 You're free to go.

20 (WHEREUPON, the jury was excused at approximately
21 2:12 p.m.)

22 MOTIONS

23 THE COURT: Mr. Scalzo, any motions?

24 MR. SCALZO: Yes, Judge. I'll renew my pre-trial
25 motions. And I'll, also, make a motion for a new trial.

1 THE COURT: And those motions are denied.

2 MR. SCALZO: And I presume, Judge, you'll enter a
3 sentence under seal?

4 THE COURT: It will be sealed.

5 Thank you.

6 *****END OF TRANSCRIPT OF RECORD*****
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1 STATE OF SOUTH CAROLINA)

) COURT OF GENERAL SESSIONS

2 COUNTY OF GREENVILLE)

) 2005-GS-23-1956, 1957

3)

4 STATE OF SOUTH CAROLINA)

) TRANSCRIPT OF RECORD

5)

6 -vs-)

7 Daniel Jesus Lopez)

8

May 7, 2013
Greenville, South Carolina

9

10 B E F O R E:

11 THE HONORABLE LETITIA VERDIN, Judge.

12 A P P E A R A N C E S

13 Joyce Montz, Esquire
14 Assistant Solicitor
Attorney for the State

15 Christopher Scalzo, Esquire
16 Attorney for the Defendant

17

18 CAROLINE HISKELL
Thirteenth Circuit Court Reporter

19

20

21

22

23

24

25

I N D E X

(There were no exhibits or witnesses presented).

State versus Lopez

P R O C E E D I N G S

1
2 MS. MONTZ: If it please the Court, Your
3 Honor, the State calls case of the State versus Daniel
4 Jesus Lopez. There are two indictments 2005-1956 for
5 possession of a firearm with an obliterated serial number
6 and 2005-1957 for trafficking in cocaine over 400 grams.
7 Your Honor, this was a trial back in 2009. Mr. Scalzo
8 represented him. It was a trial in absence. The
9 defendant was convicted by the jury and there is a sealed
10 sentence and I believe Mr. Scalzo has a motion.

11 MR. SCALZO: If it please the Court, Your
12 Honor, in talking with Mr. Lopez this morning, he has a
13 motion to have me relieved that I thought would be
14 appropriate before we deal with the sentencing. So I
15 would turn it over to you as far as the motion goes.

16 THE COURT: Tell me, Mr. Lopez, why would you
17 want a different attorney other than the one that's been
18 appointed to you, that's one of the very best in the
19 State?

20 MR. LOPEZ: I just don't feel like he's been
21 helping. I don't much of the law but --

22 THE COURT: Mr. Lopez, if I had to guess and
23 I guess I have to at this point, if I were to guess, I
24 would say that you probably want a different attorney
25 because you think it might slow this process down or

State versus Lopez

1 something like that. Well, let me say something,
2 Mr. Scalzo is, in fact, and I was not kidding when I said
3 that, one of the finest attorneys in the entire state and
4 you just got the good fortune of being appointed
5 Mr. Scalzo.

6 I'm not going to grant your motion and we
7 will proceed at this time. Okay.

8 Yes, ma'am.

9 MS. MONTZ: Your Honor, do you need the facts
10 on the case? I know the sealed sentence was put in.

11 THE COURT: I don't guess I need that but
12 this appears to be a trial date of October 12th through
13 the 15th of 2009 and this was the sealed sentence from
14 Judge C. Victor Pyle.

15 It appears, Mr. Lopez, that on 2005-GS-
16 23-1956, the jury found you guilty and the Court gave you
17 a sentence of five years and concurrent to that on
18 2005-GS-23-1957 the jury also found you guilty on that.
19 That is trafficking and the Court sentenced you to 25
20 years and a fine of \$200,000. Good luck to you, sir.

21 MR. SCALZO: And those are concurrent
22 sentences; Your Honor?

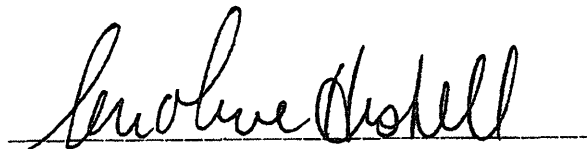
23 THE COURT: They are concurrent sentences.
24 Thank you.

25 MR. MONTZ: Thank you, Your Honor.

State versus Lopez

1 I, the undersigned, Caroline Hiskell, the
2 Official Court Reporter for the Thirteenth Judicial
3 Circuit of the state of South Carolina, do hereby certify
4 that the foregoing is a true, accurate, and complete
5 transcript of record of all the proceedings had and
6 evidence introduced in the trial of the captioned case,
7 relative to appeal, in the Court of General Sessions
8 Court, South Carolina, 7th day of May, 2013.

9 I do further certify that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 

14 Caroline Hiskell
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415



SSG

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
STATE OF SOUTH CAROLINA

Ticket or Warrant No. G 803972
G 803973
IN THE COURT OF GENERAL SESSIONS
() MAGISTRATE'S COURT
() MUNICIPAL COURT OF TAYLOR

5609
1-22-05

Daniel Jesus Lopez
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: Trafficking Cocaine / Poss of W/Altered Ser#
At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):
☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.
Thus determination was based upon the following findings of fact

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$_____, his release to be obtained by payment to the court of _____ (%) of this bond in cash, this amount being \$_____. The defendant will be obligated to the State in the full amount of \$_____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved in the court in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$ 5,500.00.

3. That the defendant shall appear at (check one)
☒ the term of the court of general sessions beginning on [Date:] when notified at [Time:] _____ o'clock, _____ M., at [Place:] Greenville County Court House
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
☐ the session of magistrate/municipal (circle one) court beginning on [Date:] _____ at [Time:] _____ o'clock, _____ M., at [Place:] _____ If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant DL

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

[Signature]
Signature of Judge

1-22-05
Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both, if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

1202 Sumner Ridge Ln
Address

Lawrenceville, Ga 3004
City/State/Zip

() 256-0239
Social Security Number/Telephone No.

[Signature]
Signature of Defendant

1-22-05
Date

Attorney Representing Accused (If known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Original copy for the Trial Court - Copy for the Defendant

SPECIAL CONDITIONS OF RELEASE

- a ☐ Placement in custody The defendant is placed in the custody of _____

 Name of person or organization
- _____ Address _____ City _____ State/Zip _____ Telephone _____
 who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.
- _____ Signature of Custodian (If Appointed) _____ Date _____
- b ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions

- c ☐ Part-time Release The defendant will be released from custody from _____ o'clock, _____ M. to _____ o'clock, _____ M. on _____
 _____ at _____ on condition that he return to the custody of _____ as designated.
- d ☐ Other Conditions. The defendant will comply with the following other conditions of release

APPEARANCE RECOGNIZANCE WITH SURETY

On the 22 day of JAN., 2005 personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 55,000, such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

Name of Surety (Printed or Typed) _____

IOS MC BEE ST.

Address of Surety _____

GREENVILLE, SC 29601

City/State/Zip _____

Tel: 271-2245

Signature of Surety _____

Signature of Judge _____

Date _____

1-24-05

418

SOLICITOR, 13TH Judicial Circuit
GREENVILLE COUNTY COURTHOUSE
305 E. North Street, Suite 325, Greenville, SC 29601
(864) 467-8647

AS ATTORNEY FOR/BONDSMAN FOR/DEFENDANT

DANIEL JESUS LOPEZ

is ordered to appear in **GENERAL SESSIONS**
COURT, GREENVILLE COUNTY COURTHOUSE
Greenville, SC on MONDAY

the 12TH day of OCTOBER

2009 at 8:30 AM

PLEASE BRING THIS CARD WITH YOU AND ASK FOR

JLK/Sonya Bass

Failure to appear may result in trial being conducted in
the defendant's absence and/or a bench warrant being
issued for defendant's arrest. 9/25/2009

TO.

Daniel Lopez
4059 BURNSIDE LN
LILBURN GA 30043

SOLICITOR, 13TH Judicial Circuit
GREENVILLE COUNTY COURTHOUSE
305 E. North Street, Suite 325, Greenville, SC 29601
(864) 467-8647

AS ATTORNEY FOR/BONDSMAN FOR/DEFENDANT

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issued for defendant's arrest. 9/25/2009 **File Copy**

TO:

Daniel Lopez
4059 BURNSIDE LN
LILBURN GA 30043

559

SOLICITOR, 13TH Judicial Circuit
GREENVILLE COUNTY COURTHOUSE
 305 E North Street, Suite 325, Greenville, SC 29601
 (864) 467-8647

AS: ATTORNEY FOR/BONDSMAN FOR/DEFENDANT

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 issued for defendant's arrest. 9/25/2009

TO:

Daniel Lopez
 1202 SUMER RIDGE LN
 LAWRENCEVILLE GA 30044

SOLICITOR, 13TH Judicial Circuit
GREENVILLE COUNTY COURTHOUSE
 305 E North Street, Suite 325, Greenville, SC 29601
 (864) 467-8647

AS: ATTORNEY FOR/BONDSMAN FOR/DEFENDANT

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 issued for defendant's arrest. 9/25/2009 **File Copy**

TO:

Daniel Lopez
 1202 SUMER RIDGE LN.
 LAWRENCEVILLE GA 30044

420

SOLICITOR, 13TH Judicial Circuit
GREENVILLE COUNTY COURTHOUSE
305 E. North Street, Suite 325, Greenville, SC 29601
(864) 467-8647

AS. ATTORNEY FOR/BONDSMAN FOR/DEFENDANT

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COURT, GREENVILLE COUNTY COURTHOUSE
Greenville, SC on MONDAY

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2009 at **8:30 AM**

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JLK/Sonya Bass

Failure to appear may result in trial being conducted in
the defendant's absence and/or a bench warrant being
issued for defendant's arrest. 9/25/2009

TO:

Daniel Lopez
1644 Cannon Ball Court
Lawrenceville GA 30044

SOLICITOR, 13TH Judicial Circuit
GREENVILLE COUNTY COURTHOUSE
305 E North Street, Suite 325, Greenville, SC 29601
(864) 467-8647

AS: ATTORNEY FOR/BONDSMAN FOR/DEFENDANT

DANIEL JESUS LOPEZ

is ordered to appear in **GENERAL SESSIONS**
COURT, GREENVILLE COUNTY COURTHOUSE
Greenville, SC on MONDAY

the 12TH day of OCTOBER

2009 at **8:30 AM**

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JLK/Sonya Bass

Failure to appear may result in trial being conducted in
the defendant's absence and/or a bench warrant being
issued for defendant's arrest. 9/25/2009 File Copy

TO:

Daniel Lopez
1644 Cannon Ball Court
Lawrenceville GA 30044

561

421

WITNESSES

Christopher Hines

/PCRB04/5

Greenville County Sheriffs Office

1/21/2005

ARREST WARRANT NUMBER

G803972

ACTION OF GRAND JURY

TRUE BILL

Daniel Jenkins
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-23-
JLK

001957

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2005

THE STATE

vs.

DANIEL JESUS LOPEZ

Indictment for

0281

TRAFFICKING COCAINE

VIOLATION § 44-53-0370

116

562

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE

At a Court of General Sessions, convened on MARCH 15, 2005 the Grand Jurors of Greenville County present upon their oath:

That DANIEL JESUS LOPEZ did in Greenville County, on or about the 21st day of January, 2005, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 400 grams of Cocaine. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Jay L. Monte
SOLICITOR

SG3

423

WITNESSES

HINES

PERRO-15

GCSO

01/21/05

ARREST WARRANT NUMBER

G 803973

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2005-GS-23-

JLK

The State of South Carolina

001956

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2005

THE STATE

vs.

DANIEL JESUS LOPEZ

Indictment for

2364

POSSESSION OF FIREARM WITH
OBLITERATED SERIAL NUMBER

VIOLATION § 16-23-30

115

564

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF FIREARM WITH OBLITERATED
SERIAL NUMBER

At a Court of General Sessions, convened on MARCH 15, 2005 the

Grand Jurors of Greenville County present upon their oath:

That DANIEL JESUS LOPEZ did in Greenville County, on or about the 21st day of January, 2005, knowingly and unlawfully buy, sell, transport, pawn, receive, or possess a pistol from which the original serial number has been removed or obliterated. This is in violation of §16-23-30 of the Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Jay K. Monte
SOLICITOR

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

NOV 02 2018

Appeal from Horry County Court of Common Pleas
The Honorable Perry Gravely, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2017-0002411

Daniel Lopez,.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that one (1) bound copy of the correct appendix and one (1) unbound copy of the correct appendix were filed with this Court, this day the October 31st, 2018, through the United States mail with sufficient postage attached addressed to:

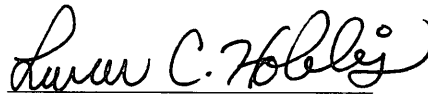
The Honorable Daniel E. Shearouse, Clerk of Court
SC Supreme Court
Post Office Box 11330
Columbia, SC 29211

The undersigned further certifies that one (1) bound copy of the correct appendix was served upon the Respondent this day October 31, 2018, through the United States mail with sufficient postage attached addressed to:

Assistant Attorney General DeShawn H. Mitchell
SC Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

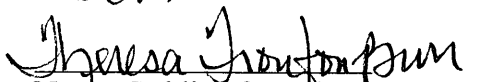
The undersigned further certifies that all parties required to be served pursuant to the appellate court rules have been served.

This 31st day of October, 2018



LAUREN C. HOBBS, #103190
William G. Yarborough III, Attorney at Law, LLC

Sworn before me this 31st day
of October, 2018



Notary Public of South Carolina
My commission expires: 3/2021